99-41

POTENTIAL CONFLICT OF INTEREST/REVOLVING DOOR PROBLEMS AT DOD

HEARING

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

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CONTENTS

Statements of:
Hon. Charles E. Bennett, a Member of Congress from the State of Florida 16
Hon. Barbara Boxer, a Member of Congress from the State of California 28
Derek J. Vander Schaaf, Deputy Inspector General, Department of Defense, accompanied by Col. Donald Keeney, Deputy Assistant Inspector General for Special Inquiries 40
Chapman B. Cox, General Counsel, Department of Defense, accompanied by James P. Wade, Jr., Acting Under Secretary for Defense Research and Engineering, and David W. Ream, Ethics Counselor 111
Jeffrey Rohm, Austin, TX 155

READEX FICHE

POTENTIAL CONFLICT OF INTEREST/REVOLVING DOOR PROBLEMS AT THE DEPARTMENT OF DEFENSE

WEDNESDAY, OCTOBER 8, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 311, Cannon House Office Building, Hon. Gerry Sikorski (chairman) presiding.

Mr. SIKORSKI. The subcommittee will come to order.

This is a hearing before the Subcommittee on Investigations, Committee on Post Office and Civil Service, the U.S. House of Representatives. Under rule X of the House, this subcommittee is responsible for—

> The investigation, review, and study on a continuing basis of the application, administration, and execution of those laws or parts of laws, the subject matter of which is within the jurisdiction of the committee.

This subcommittee, therefore, is charged with the responsibility to examine, among other things, the potential for conflicts of interest on the part of Government employees while they are employed by the Government and after they leave Government, as governed by title 5 of the United States Code. Today, we will be generally reviewing the Defense Department's code of ethics and its implementation of Executive Order 11222, which forms the underpinning of this country's ethics laws.

The specific focus of this hearing will be on the recent activities of a former high-ranking Department of Defense procurement official, her trolling for employment with the defense industry while retaining her responsibilities over major procurement policies, the subsequent inaction and ineffective action of DOD officials responsible for deciding whether her actions were ethical, and finally the resulting implications for DOD's entire ethics program and needed legislative and regulatory changes in this area.

Before we begin, I would like to commend both Chairman Ford of the full Committee on Post Office and Civil Service and Chairman Dingell of the Committee on Energy and Commerce. Chairman Dingell's Oversight and Investigations Subcommittee, of which I am a member, has for the past year and a half conducted an in-depth investigation into Defense Department procurement practices as related to that committee's jurisdiction.

That investigation has uncovered widespread fraud and waste of staggering proportions. It is that same inquiry that first revealed the activities of Mary Ann Gilleece, former Deputy Under Secretary for Acquisition Management at DOD—as the Wall Street Journal put it, "the Pentagon's top procurement regulator."

The Oversight Subcommittee found that taxpayer money was routinely being given to defense contractors who were buying everything from company-inscribed Gucci bags to trips to Pago Pago. In a much touted "get tough" speech, in the wake of the first hearing on General Dynamics earlier this year, Secretary Weinberger proposed that defense contractors certify that they are telling the truth when they bill the taxpayers—or suffer criminal penalties.

On April 5, however, Ms. Gilleece wrote a so-called clarifying letter that significantly weakened, in two ways, the certification standard and reversed the orders of the Secretary of Defense. This occurred after Ms. Gilleece had initiated her efforts to secure new employment, less than a month before she first approached DOD officials about her plans to establish a consulting firm for defense contractors.

Consequently, Chairman Ford requested this investigation into conflicts-of-interest and revolving door issues and the possible need for legislative and statutory reforms to correct these problems. We will begin this investigation by today examining the instance of the former Deputy Under Secretary, Mary Ann Gilleece's, efforts to establish a defense contractor consulting firm while still in the employ of the American taxpayers.

As reported in the Washington Post, Ms. Gilleece targeted her business at the—

> Defense Department's top weapons manufacturers, whose multibillion dollar a year business was directly influenced by Gilleece in her job as Deputy Under Secretary of Defense for Acquisition.

The report of the DOD inspector general concluded that Ms. Gilleece, at the least, violated the Department's own standards of conduct, and that her business activities "placed her in conflict with the duties and responsibilities of her DOD position."

Additionally, the IG requested a review by the Justice Department to determine whether there had been a criminal violation of the relevant conflict-of-interest law, section 208.

While Ms. Gilleece is no longer in a position to influence Defense Department procurement and rulemaking affecting her potential clients in defense contracting, the potential damage she may have caused this country and its taxpayers is of serious concern to this subcommittee. Equally or more alarming, actually, is the Department's handling of the case and what it tells us about the adequacy of the Department's ethics program, one, to prevent apparent and actual conflicts-of-interests and revolving door problems, and two, to identify and deal aggressively with such cases when they do occur.

A complete chronology of the events surrounding the Gilleece case follows my prepared remarks as does a linear graph of some of the salient events in the matter. They disclosed that this is a blatant case of conflict of interest; that Ms. Gilleece, herself an attorney, had every reason to know that her actions were wrong; and

that DOD's ethics officer, the general counsel, and Ms. Gilleece's boss all should have advised her that her actions violated DOD's standards of conduct and quite possibly the law.

Instead, we have the DOD spokesman, late in the game, saying that she complied with all Government regulations and that DOD "found nothing improper in what she did or illegal." It leaves unanswered the important question: If the Department of Defense can't prevent, recognize, or catch a case such as this, will they catch anything?

What we find here and in other cases we are investigating is not good public administration, not good law enforcement, and not good national security. And it is not ethical. It could very well cost American taxpayers billions of dollars by institutionalizing a system that encourages abuse, fraud, and waste.

Well, the dangers of conflicts of interest and all they bring are not new. Even before the Sermon on the Mount warned us against serving two masters, Plat had forbidden his philosopher kings to hold any personal economic interests whatsoever. It is good we are reminded of those dangers here.

[The following material was ordered placed in the record with Mr. Sikorski's opening statement:]

CHRONOLOGY

- In April, 1983, Ms. Gilleece becomes the Deputy Under Secretary for Acquisition Management. She is charged with providing guidance and policy regarding contract terms and conditions, pricing and contract financing, administration of contracts, and business strategy relating to major weapons systems. Her office is also the focal point for management of standards and specifications.

- In January, 1985, DOD announces a reorganization that would phase out Ms. Gilleece's job and she begins searching for public and private sector employment. She then begins to develop a consulting firm for defense contractors.

- Reports of waste and fraud in DOD's procurement practices causes Secretary Weinberger to establish a certification requirement for defense contractor billing, which Ms. Gilleece subsequently weakens significantly on April 5.

- On April 30, Ms. Gilleece informs DOD's ethics counselor of her plans to establish a consulting firm "specializing in procurement issues."

- On May 21, Ms. Gilleece writes to 14 defense contractors, including Magnavox Electronic Systems Co. She tells Magnavox that she is "now fully committed to a consulting business. If you believe we are essentially ready to go, I would welcome Magnavox as our first client," at $30,000 a year beginning on September 1. In the "proposed agreement" in the packets to the defense contractors, Ms. Gilleece states that her firm will "assist clients to compete for government business with confidence and success. PSC provides a thorough understanding of the internal forces motivating government customers, particularly the Department of Defense, and helps its clients accentuate their strengths in doing business with those customers." She further offers her assistance "to respond quickly to changes in federal procurement," and to provide "timely information on imminent policy changes being considered by the Federal government." The firm would also "interpret procurement regulations" and analyze "profit policy, certification requirements and audit trends."

- On June 5, Ms. Gilleece meets with Dr. Wade, her superior, and he recommends that she disqualify herself from work involving the contractors she had contacted. Dr. Wade did not review Ms. Gilleece's letters and her proposed agreement.

- On June 7, Ms. Gilleece writes a memo criticizing proposed work measurement standards. These standards are to ensure that taxpayers pay for the time it "should take" to make defense-related products and what it "should cost" to buy them.

- On June 14, Ms. Gilleece signs a disqualification form. This disqualification did not cover her policy making responsibilities that affect all defense contractors, their DOD contracts and how they get paid.

- A June 25, Wall Street Journal article features Ms. Gilleece. It states that she is a "staunch defender of the defense industry," and that she believes the system is "99 and 44/100 percent pure." It went on to report that one Republican Senator accused Ms. Gilleece of, "loving the almost incestuous relationship between industry and the Pentagon."

- On June 25, and June 26 or 27, Ms. Gilleece meets with Dr. Wade, Mr. Ream and DOD's General Counsel Chapman Cox. Dr. Wade suggests removing Ms. Gilleece from her job and making her a Special Assistant. Instead, she states that she will terminate her plans to start a consulting firm for defense contractors.

- On July 3, General Counsel Cox requests an IG investigation.

- On July 10, Ms. Gilleece participates in a meeting concerning the Federal Acquisition Regulation, which serves as the basis for all government contracting policy and practices, to discuss certification and field audits.

- On July 24, Ms. Gilleece testifies before a Senate subcommittee opposing work measurement standards.

- Also on July 24, Ms. Gilleece writes a memo to Dr. Wade advising him she had notified the defense firms she had contacted about the termination of her plans.

- On August 16, the IG completes its investigation, concluding that Ms. Gilleece had violated DOD's standards of conduct and referring the case to the Department of Justice. The IG found that "The actions taken by Ms. Gilleece, and the ensuing publicity, have so compromised her ability to perform her rule making and policy setting role that she can no longer serve the Department in such a position."

- On August 19, Ms. Gilleece resigns from DOD.

BIOGRAPHICAL DATA

Mary Ann Gilleece

Mary Ann Gilleece served as the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management) from April 1983 to August 1985. As Deputy Under Secretary, she served as the principal advisor to the Under Secretary of Defense for Research and Engineering in all matters concerning management and policy for the Department of Defense acquisition process. She directed the effort to make procurement system improvements in accordance with Executive Order 12352 of March 17, 1982 on Federal Procurement Reforms and was the DoD member of the OMB Executive Committee on Procurement Reforms. Another key area of responsibility was the formulation and execution of DoD international acquisition objectives, policies, and programs for cooperation in research, development, production, and procurement with U.S. Allies. Other major activities of her office included programs to improve the productivity of defense contractors and the production capabilities of the U.S. industrial base.

Prior to her appointment, Ms. Gilleece was appointed an Assistant Attorney General for the Commonwealth of Massachusetts, practiced law privately for a number of years, and served for 6 years as Counsel to the U.S. House of Representatives, Committee on Armed Services. In that position she was responsible for Committee functions relating to Federal contracting legislation and government procurement methods.

She graduated from the University of Connecticut in 1962 and attended Suffolk University Law School in Boston where she received a Juris Doctor degree in 1972 and in that year became a member of the Massachusetts Bar. In 1982, she received a Master of Laws degree in Government Procurement Law from the George Washington University. Ms. Gilleece is a member of the Federal Bar Association and American Bar Association Public Contracts Sections. She is on the Board of Advisors of the National Contract Management Association.

BIOGRAPHICAL DATA

C. M. Mayer

C. M. Mayer has an extensive background in defense contracting. He has held a broad range of key positions in both developing and implementing contracting policy for major systems. He served as contracting officer for a number of major naval construction and overhaul programs, including the FFG-7 guided missile frigate, DD-963, and Trident submarine programs. He was responsible for all business and contractual aspects of these programs and dealt with a wide variety of difficult issues, including claim settlement, indemnification, and complex contract financing. In the DD-963 class destroyer construction and submarine overhaul programs, he acquired extensive field contract administration experience, particularly in such specialized areas as cost accounting standards, cost allowability, and cost/schedule control systems. As the chief contract finance advisor within the Naval Sea Systems Command, he had many years of experience in resolving audit issues in connection with contract placement and administration. Most recently, during the two years he served as executive assistant to the Deputy Under Secretary of Defense (Acquisition Management), he participated in the formulation and implementation of acquisition policy encompassing the entire Department of Defense.

Mr. Mayer completed twenty years active duty in the U.S. Navy, serving as a Captain in the Supply Corps at the time of his retirement. He has a Bachelor of Science degree from the University of Notre Dame and his MBA from the University of Virginia, where he is a member of the adjunct faculty, lecturing on procurement. He has also taught accounting and business finance. He is a licensed CPA in the District of Columbia and is a member of the American Institute of CPAs and the DC Institute of CPAs.

SEQUENCE OF MS. GILLEECE'S DISQUALIFICATION ACTIONS

6/14/85 Ms. Gilleece's first disqualification from 14 contractors for which she initially contacted. (11 contractors plus two law firms are yet to be contacted.)

The first disqualification action came 6 weeks after she began contacting contractors.

6/18/85 Ms. Gilleece signs additional disqualification for 10 additional firms she contacted.

6/28/85 Ms. Gilleece disqualifies herself from the remaining contractor. No evidence that she disqualified herself from law firms.

6/26 or 6/27 Ms. Gilleece informs Dr. Wade and Messrs. Cox and Ream that she would notify the firms that she contacted that she plans to terminate her consulting venture. DOD officials wanted her to notify contractors by letters, she preferred phone calls. We don't know if notification of termination plans actually occurred.

NOTE: Ms. Gilleece had contact with 31 firms -- 29 defense contractors and two law firms. Of the 29 contractors, four contacted her. No evidence that Ms. Gilleece recused herself from contractors who contacted her.

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-3000

RESEARCH AND ENGINEERING

(AM)

June 14, 1985

MEMORANDUM FOR DR. WADE

SUBJECT: Disqualification - Financial Interests

By reason of a financial interest in the companies listed below, until further notice, I am disqualified from taking any action that might have an impact upon that company.

In the unlikely event that any matter arises that may have a direct or predictable impact upon the interest of that company, I will immediately make necessary arrangements to insure that I am not involved. In addition, I will advise my immediate subordinates of this disqualification.

Company	Date Disqualified From (all 1985)
Magnavox Electronic Systems Company	May 21
Dynalectron Corporation	June 5
General Electric Company	June 5
Allied Bendix Aerospace	June 5
FMC Corporation	June 6
Sperry Corporation	June 6
Hazeltine Corporation	June 10
United Technologies Corporation	June 10
AVCO Corporation	June 10
Singer Company	June 11
Westinghouse Electric Corporation	June 11
Rockwell International Corporation	June 13
Gould, Incorporated	June 13
Raytheon Company	June 13

Mary Ann Gilleece
Deputy Under Secretary
(Acquisition Management)

Copy to:
Mr. D. W. Ream, Office of General Counsel
Mrs. Eleanor Spector, ADUSD (Acquisition)
Mr. John Mittino, ADUSD (Production Support)

EYES ONLY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-3000

RESEARCH AND ENGINEERING

(AM)

June 18, 1985

MEMORANDUM FOR DR. WADE

SUBJECT: Disqualification - Financial Interests

By reason of a financial interest in the companies listed below, until further notice, I am disqualified from taking any action that might have an impact upon that company. These are in addition to the companies previously identified to you.

In the unlikely event that any matter arises that may have a direct or predictable impact upon the interest of that company, I will immediately make necessary arrangements to insure that I am not involved. In addition, I will advise my immediate subordinates of this disqualification.

Company	Date Disqualified From (all 1985)
McDonnell Douglas Corporation	June 15
3M Company	June 15
Emerson Electric Company	June 15
Boeing Company	June 15
Northern Telecom	June 17
Texas Instruments	June 4
Honeywell	June 5
Ford Aerospace	June 15
N.I. Industries	June 5
TRW	June 12

Four other companies have informally indicated some interest in my future activities, but the contact has been so tentative that I do not foresee any possibility of financial interest. However, I intend to refrain from any official action with these companies as well as those listed above.

Hughes Aircraft Company
Litton Industries
Grumman Aerospace
Motorola, Incorporated

Mary Ann Gilleece
Deputy Under Secretary
(Acquisition Management)

Copy to:
Mr. D. W. Ream, OAGC
Mrs. Eleanor Spector, ADUSD(A)
Mr. John Mittino, ADUSD(PS)

EYES ONLY

FILE COPY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-3060

RESEARCH AND ENGINEERING

(AM)

June 28, 1985

MEMORANDUM FOR DR. WADE

SUBJECT: Disqualification - Financial Interests

Referring to my previous memoranda to you on the same subject, two companies should be deleted on the grounds that they have indicated that they have no interest in my proposed consulting firm. The companies are Dynalectron and Northern Telecon. The indications of no interest were received June 25.

One company, Teledyne, should be added to the list of those from which I am disqualified by reason of financial interest, effective June 25.

Mary Ann Gilleece

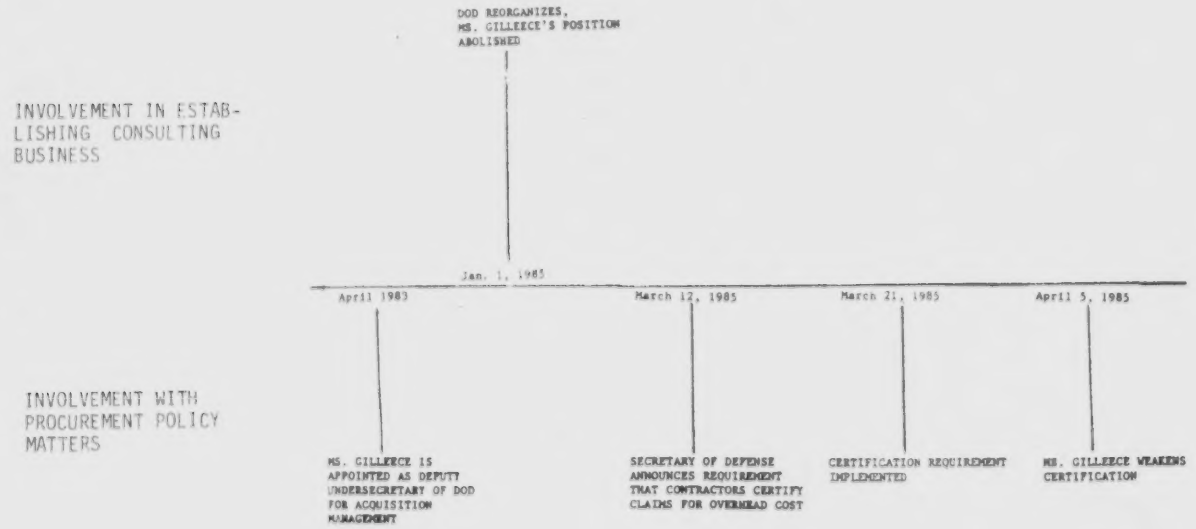
MARY ANN GILLEECE
Deputy Under Secretary
(Acquisition Management)

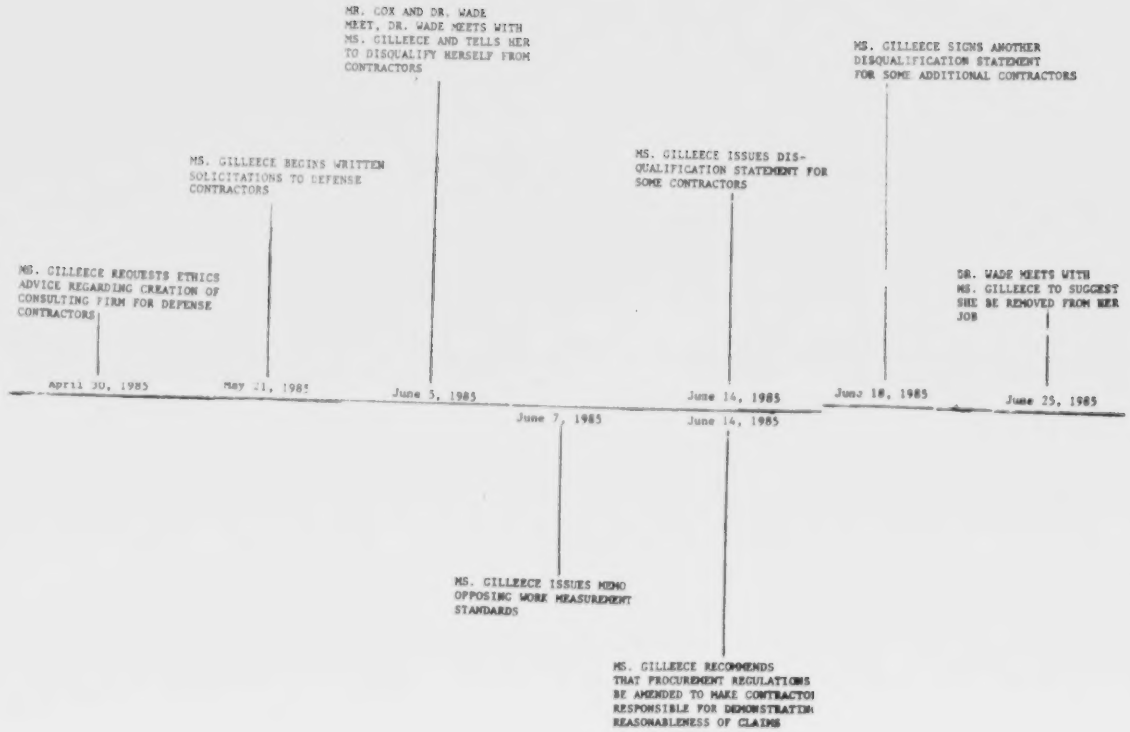
Copy to:
Mr. D. W. Ream, OAGC
Mrs. Eleanor Spector, ADUSD(A)
Mr. John Mittino, ADUSD(PS)

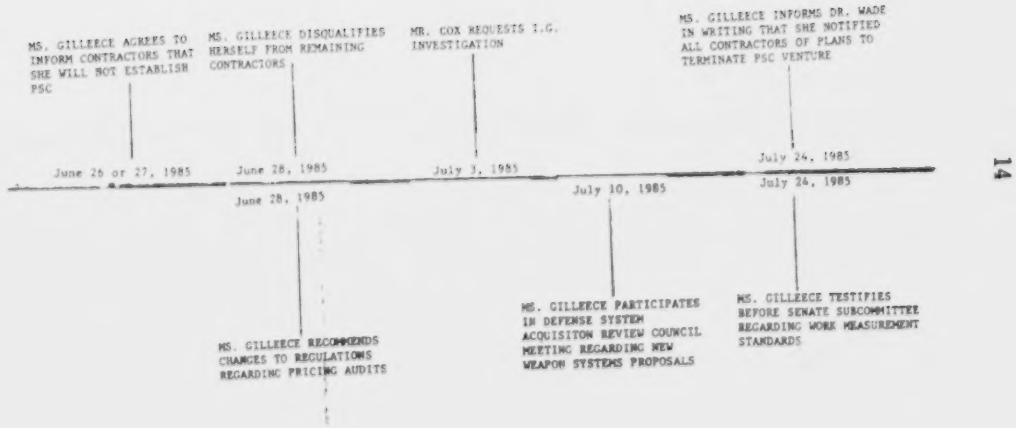
EYES ONLY

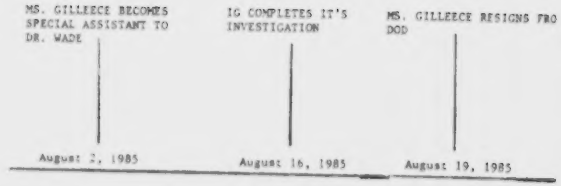
CHRONOLOGY OF EVENTS REGARDING

MS. GILLEECE'S ACTIVITIES


DOD REORGANIZES, MS. GILLEECE'S POSITION ABOLISHED
INVOLVEMENT IN ESTABLISHING CONSULTING BUSINESS
Jan. 1, 1985
April 1983
March 12, 1985
March 21, 1985
April 5, 1985
INVOLVEMENT WITH PROCUREMENT POLICY MATTERS
MS. GILLEECE IS APPOINTED AS DEPUTY UNDERSECRETARY OF DOD FOR ACQUISITION MANAGEMENT
SECRETARY OF DEFENSE ANNOUNCES REQUIREMENT THAT CONTRACTORS CERTIFY CLAIMS FOR OVERHEAD COST
CERTIFICATION REQUIREMENT IMPLEMENTED
MS. GILLEECE WEAKENS CERTIFICATION


MR. COX AND DR. WADE MEET, DR. WADE MEETS WITH MS. GILLEECE AND TELLS HER TO DISQUALIFY HERSELF FROM CONTRACTORS
MS. GILLEECE SIGNS ANOTHER DISQUALIFICATION STATEMENT FOR SOME ADDITIONAL CONTRACTORS
MS. GILLEECE BEGINS WRITTEN SOLICITATIONS TO DEFENSE CONTRACTORS
MS. GILLEECE ISSUES DISQUALIFICATION STATEMENT FOR SOME CONTRACTORS
MS. GILLEECE REQUESTS ETHICS ADVICE REGARDING CREATION OF CONSULTING FIRM FOR DEFENSE CONTRACTORS
DR. WADE MEETS WITH MS. GILLEECE TO SUGGEST SHE BE REMOVED FROM HER JOB
April 30, 1985
May 21, 1985
June 5, 1985
June 14, 1985
June 18, 1985
June 25, 1985
June 7, 1985
June 14, 1985
MS. GILLEECE ISSUES MEMO OPPOSING WORK MEASUREMENT STANDARDS
MS. GILLEECE RECOMMENDS THAT PROCUREMENT REGULATIONS BE AMENDED TO MAKE CONTRACTOR RESPONSIBLE FOR DEMONSTRATION REASONABLENESS OF CLAIMS


MS. GILLEECE AGREES TO INFORM CONTRACTORS THAT SHE WILL NOT ESTABLISH PSC
June 26 or 27, 1985
MS. GILLEECE DISQUALIFIES HERSELF FROM REMAINING CONTRACTORS
June 28, 1985
MR. COX REQUESTS I.G. INVESTIGATION
July 3, 1985
MS. GILLEECE INFORMS DR. WADE IN WRITING THAT SHE NOTIFIED ALL CONTRACTORS OF PLANS TO TERMINATE PSC VENTURE
July 24, 1985
June 28, 1985
MS. GILLEECE RECOMMENDS CHANGES TO REGULATIONS REGARDING PRICING AUDITS
July 10, 1985
MS. GILLEECE PARTICIPATES IN DEFENSE SYSTEM ACQUISITON REVIEW COUNCIL MEETING REGARDING NEW WEAPON SYSTEMS PROPOSALS
July 24, 1985
MS. GILLEECE TESTIFIES BEFORE SENATE SUBCOMMITTEE REGARDING WORK MEASUREMENT STANDARDS


MS. GILLEECE BECOMES SPECIAL ASSISTANT TO DR. WADE
IG COMPLETES IT'S INVESTIGATION
MS. GILLEECE RESIGNS FRO DOD
August 2, 1985
August 16, 1985
August 19, 1985

NOTE: Through her duties, Ms. Gilleece controlled policies affecting thousands of defense contractors and over $140 billion in payments.

Mr. SIKORSKI. Before I welcome our first panel and good friends, distinguished colleagues, I would like to note that our first witness today was to be Mary Ann Gilleece. She, however, was not available for either communication or contact. We tried repeatedly to get in touch with her to review her testimony, to receive it here today, or to just simply talk about this matter so that we could ensure a balanced hearing and a balanced record.

We will have to pursue that more formally after this hearing if she is not forthcoming. Two people that have been in the forefront of addressing this problem on behalf of the taxpayers of this country are here today to begin this discussion. And I ask that they come up.

First is Congressman Charles E. Bennett of Florida who has been the leader in the Armed Services Committee, and Congresswoman Barbara Boxer from California. They are the authors of expanded revolving door restrictions. We thank you both for being here.

It is the custom of this committee—before you sit down, if you have no objections, to being sworn in.

[Witnesses sworn.]

Mr. SIKORSKI. Thank you and welcome.

Mr. BENNETT. Is it all right now to commence?

Mr. SIKORSKI. Yes.

TESTIMONY OF HON. CHARLES E. BENNETT, A MEMBER OF CONGRESS FROM THE STATE OF FLORIDA

Mr. BENNETT. I would like to have my entire statement put in the record, because that will shorten it a little bit for you. I will stick to the script, however, so it won't be extraneous until you get to the question and answer period.

Mr. Chairman and members of the committee, thank you for inviting me here today to discuss with you the current status of conflict-of-interest legislation in the Congress.

I have been active in this area since 1951, when I introduced a bill to establish a code of ethics for Government employees. For the past 15 years, I have been trying to pass legislation to prevent Government officials from leaving Government service and immediately going to work for contractors with whom they had official relations.

In 1977, a bill along these lines that I cosponsored with Senator Proxmire passed the Senate unanimously. Unfortunately, the House bottled up the bill, and Congress enacted the rather insufficient language of the Ethics in Government Act. It was an improvement, but not as much as it should have been in this particular area. This act established the Office of Government Ethics and elaborated postemployment restrictions for Government employees, codified at title 18, United States Code, section 207.

I have persisted in my efforts to enact some legislation with real teeth, and this year we are close to succeeding, thanks in large part to the work of Congresswoman Barbara Boxer, who is dynamite for things that are good here in Congress, as we all know.

In April of this year we held joint hearings on this issue before my Seapower Subcommittee and the Investigations Subcommittee chaired by Congressman Nichols. As a result of those hearings, on

May 6 I introduced on behalf of myself, Mrs. Boxer, and Mr. Nichols, H.R. 2554, the Defense Procurement Conflict of Interest Act. Our bill combined the best features of my original bill and that of Mrs. Boxer on this issue. It had almost 50 other cosponsors and was passed by the House Armed Services Committee this June, but with several very weakening and objectionable amendments.

The bill is very clear and direct. It prohibits anyone with significant responsibility for a defense contract from immediately going to work for a firm involved with that contract. Employees who have dealt with a contractor during their last 2 years of Government service are barred from going to work for that contractor for 2 years after leaving the Government. Anyone violating this ban would be subject to up to 1 year in jail or a $10,000 fine. Contractors would be subject to the same criminal penalties and would also be liable for contract damages of at least $100,000 if they hired someone in violation of this ban.

Although I believe these types of measures should be applied to all Government employees, we limited the bill to the Department of Defense in order to avoid having the bill bottled up in different committees. That is an evil which has occurred recently in Congress. I think it is fine that we do occasionally put things in other committees, but sometimes it can just kill your legislation by overconsideration.

The revolving door issue was one that deadlocked a conference between the House and the Senate on the defense authorization bill. For 2 weeks, the Senate refused to agree to any real prohibition. Under great pressure not to hold up the controversial conference, I agreed to a simple paragraph which I believe prohibits the key officers and civilian officials in the Department of Defense from going through the revolving door. It prohibits a Presidential appointee who is a primary Government representative in the negotiation of a Government contract with a defense contractor from accepting employment with that contractor for 2 years.

Why is it important to include high-level officials in the coverage of this bill?

First, the standards of conduct of any organization are set by the leaders. If the leaders engage repeatedly in questionable, unethical or illegal activities, then it is likely that their subordinates will do likewise—regardless of the regulations on the books. How can we expect that the program manager or auditor for a particular weapon will follow the spirit and letter of this law if those above leave the Government and reappear on the other side of the desk with obvious increases in personal income and the apparent approval of the Government?

Obviously, that's not a good thing. The morale and the motivation of procurement officials is already adversely affected by the revolving door abuses of superiors, and passing a law which establishes a double standard of conduct will make the problem even worse, not better.

Second, the American public must be assured that decisions involving billions of dollars and the lives of thousands of service personnel are made as objectively and honestly as possible. This is very important for those high-level officials with the highest public visibility. The public must have faith in the management of the de-

fense budget if we are to retain the existing national support for a strong defense, especially when confronted with mounting Federal deficits.

Unfortunately, the public has had good reason in recent years to doubt the objectivity of some officials. While most procurement officials bring the highest integrity to the performance of their duties; well-publicized hirings by major defense contractors of high officials, in some cases immediately after those officials had concluded deals favorably to the contractors, have tarnished the reputation of the Department of Defense.

Additionally, we have had several major weapons programs, such as the Divad air defense gun and the Maverick missile, where dozens of officials in charge of the programs, including test officers, program managers, auditors and plant representatives, have left Federal employment for jobs with the very defense contractors they had previously supervised.

It is difficult to prove a direct relationship between the revolving door and the poor performance and skyrocketing cost of these troubled programs. However, that is certainly more than a perception problem, as some people seem to think. This problem cannot be solved merely by better public relations or the passage of paper reforms. This situation threatens the national security of our Nation and demands corrective action—even if that action adversely affects the lucrative career opportunities of some officials.

While many members of the armed services and officials involved in the procurement process have welcomed legislation such as this, the official view of the Department of Defense, as stated by Mr. Cox previously:

> The public has been well-protected against the potential influences of conflicting public and private interests by the Ethics in Government Act of 1978.

Yet the Staff Judge Advocate at the Air Force's Contract Management Division has stated that 18 U.S.C. 207, did not deter the types of postemployment problems typical of the Department of Defense. And I think the inspector general has come out with a similar statement. He feels that the law should be strengthened from what was done in the conference.

Government studies, witness testimony, and investigative reporting have established overwhelming evidence that serious conflict of interest problems exist, that they have not been properly addressed by current law, and that they contribute to the decreasing quality and increasing cost of some of our most important weapon systems.

Because the existing regulations are inadequate and because they have not been very much enforced, I introduced the Defense Procurement Conflict of Interest Act. The amendments added by the committee watered down this legislation, and for that reason—and I am saying by the conference, as well as the committee—I will offer on the floor of the House an amendment which will duplicate what the House passed on the Defense Authorization Act by a vote of 397 to 19, an overwhelming victory for the bill which Mrs. Boxer and I originally introduced, and which was watered down in the House Armed Services Committee, and which was changed on the floor of the House to be the original bill that Mrs. Boxer and I introduced.

I will also work to get this language passed as an amendment to the Appropriations Act. I will also continue my efforts to make sure that the correct interpretation is given to the language and conference report on the Defense Authorization Act. I may say on that issue, and I have it more detailed in the part I didn't read here, the Department of Justice has come out with a definitive action confirming what I believed to be so all along and what we agreed to in conference; that it did include military officers as well as civilians.

Mr. Chairman, I have attached for the record a copy of the original language of H.R. 2554 that was passed in the House defense bill, and a copy of the language which came back from the House-Senate conference. Mr. Chairman, I appreciate this opportunity to discuss these matters with your committee, and I congratulate you on it, and I sincerely hope that you will be able to find it possible to extend this prohibition of that type of illegal action to other things in addition to the Department of Defense.

I think it is needed in others, and the only reason why Mrs. Boxer and I didn't do it is we saw a target of opportunity. We saw a possibility of getting this through our committee. I wish they didn't do it in such a watered down form, but on the floor, after a long debate, less than 20 Members, voted for the weaker provision and a vast majority of the Congress overwhelmingly voted for it. Thank you very much for this opportunity to be with you.

[The statement of Mr. Bennett follows:]

TESTIMONY OF CHARLES E. BENNETT (D.-FLA)

Before the Subcommittee on Investigation
of the Committee on the Post Office and Civil Service

October 8, 1985

Mr. Chairman and members of the Committee, thank you for inviting me here today to discuss with you the current status of conflict-of-interest legislation in the Congress.

I have been active in this area since 1951, when I introduced a bill to establish a code of ethics for government employees. For the past 15 years, I have been trying to pass legislation to prevent government officials from leaving government service and immediately going to work for contractors with whom they had official relations. In 1977, a bill along these lines that I cosponsored with Senator Proxmire passed the Senate unanimously. Unfortunately, the House bottled up the bill and Congress enacted instead the rather insufficient language of the Ethics in Goverment Act. This Act established the Office of Government Ethics and elaborated post-employment restrictions for government employees, codified at 18 United States Code, section 207.

The Ethics in Government Act was supposed to help eliminate conflicts of interest for government officials, but the provisions are fairly weak and several reports by the General Accounting Office have shown that they are rarely enforced.

I have persisted in my efforts to enact some legislation with real teeth, and this year we are close to succeeding, thanks in large part to the work of Congresswoman Barbara Boxer.

In April of this year we held joint hearings on this issue before my Seapower Subcommittee and the Investigations Subcommittee chaired by Congressman Bill Nichols. As a result of those hearings, on May 6th I introduced on behalf of myself, Mrs. Boxer and Mr. Nichols, H.R. 2554, the Defense Procurement Conflict of Interest Act. Our bill combined the best features of my original bill and that of Mrs. Boxer on this issue. It has almost 50 other co-sponsors and was passed by the House Armed Services Committee this June, but with several weakening and objectionable amendments.

The bill passed by the Committee differs in several important aspects from the bill I introduced. Amendments added during the Committee mark-up greatly weakened the bill. The House, by it actions on the Defense Authorization Act of 1986, overwhelmingly endorsed the language of the original legislation rather than the weaker version coming from the Committee. By a vote of 397 to 19, the House attached the original language as an amendment to the Defense Act.

Let me discuss the content of the bill briefly and then describe what has happened to this legislation up to this point in time.

The bill is very clear and direct. It prohibits anyone with significant responsibility for a defense contract from immediately going to work for a firm involved with that contract. Employees who have dealt with a contractor during their last two years of government service are barred from going to work for that contractor for two years after leaving the government. Anyone violating this ban would be subject to up to one year in jail and/or a fine of $10,000. Contractors would be subject to the same criminal penalties and would also be liable for contract damages of at least $100,000 if they hired someone in violation of this ban.

Although I believe these types of measures should be applied to all government employees, we limited the bill to the Department of Defense in order to avoid having the bill bottled up in different committees.

H.R. 2554, will be reported out to the floor of the House soon. I will offer an amendment on the floor which will duplicate the amendment passed by the House on the Defense Authorization Act and I am confident it will pass. We are also planning to attach the bill as an amendment to the Appropriations Act for Fiscal Year 1986, but the details of that are still being worked out.

These actions are all necessary because the House-Senate conference greatly weakened the language attached by the House to the Defense Authorization Act. As you know, I was involved in the lengthy conference negotiations on procurement reform. From the beginning, it was clear that the Senate was opposed to the House reforms. They were tireless in their efforts to weaken and water down the House measures. But I negotiated in good faith and attempted to arrive at some compromise.

The "Revolving Door" issue was one that deadlocked the conference. For two weeks the Senate refused to agree to any real prohibitions. Under great pressure not to hold up the conference I agreed to a simple paragraph which I believe prohibits the key officers and civilian officials in the Department of Defense from going through the revolving door. It prohibits a Presidential appointee who is a primary government representative in the negotiation of a government contract with a defense contractor from accepting employment with that contractor for two years.

I was deeply disturbed after the conference to find out that our compromise was being interpreted by the Department of Defense to cover, not the thousands we had intended, but a handful of officials. I believe this

interpretation is wrong. The Department of Justice has advised me that the conference language does cover, not just high-level officials, but military officers, who, of course, are all appointed by the President This was my intention and I hope the Department of Defense when it issues its regulations implementing this language will follow what the Department of Justice has saind in this.

Because there has been considerable debate about whether "Revolving Door" legislation should apply to high-level officials, let me discuss that issue as it developed in the Committee amendments to H.R. 2554.

In the version passed by the House Committee on Armed Services, high-level officials are excluded from coverage. The Committee bill exempts precisely those positions of authority which are the most important to include in any conflict-of-interest legislation.

This bill, as amended, would exempt for example:

-- the former top Navy official who negotiated a $500 million settlement with General Dynamics and then left to go to work for that corporation.

-- the former Army assistant chief of staff for research and development, the president of the Army Defense Board and other high-ranking officers who were responsible for testing the DIVAD system, and who then quit to work for the company producing the DIVAD, Ford Aerospace.

-- the former head of the Air Force Systems Command, who retired and set up his own one-man counsulting firm for defense contractors whose business he had once overseen on behalf of the government, and,

-- the former top Pentagon procurement regulator who wrote letters to dozens of contractors she had dealt with officially, seeking retainers for a consultant service she planned to set up.

The bill as passed by the Committee opened up huge loopholes in the legislation.

In the original bill as introduced, the Secretary of Defense would provide a list of procurement positions covered by the bill. This would be a guide to DOD employees so they would know whether their position was of a type most likely to experience a conflict of interest situation. The Committee's actions narrowly defined covered procurement functions and excluded positions not specifically identified by the Secretary of Defense.

Under the amended version of the bill, only those individuals whose primary duty is the supervision of a particular product are covered. If someone dealt with more than one contractor or with more than one weapon, that person probably would not be covered under the amended bill as approved by the Committee. In practice, most positions above the level of a program manager would be excluded from coverage of the bill, even though those individuals play extremely important roles and make extremely critical decisions in the procurement process.

There is also a provision which allows the Secretary of Defense to exempt positions altogether if those positions deal with many contractors. This provision would also exempt high-level officials, even though the Secretary might never need to use this waiver, since high officials are exempted by the provisions already mentioned.

Why is it important to include high-level officials in the coverage of this bill?

Firstly, the standards of conduct of any organization are set by the leaders of that organization. If the leaders engage repeatedly in questionable, unethical or illegal activities, then it is likely that their subordinates will do likewise--regardless of the regulations on the books. How can we expect that the program manager or auditor for a particular weapon will follow the spirit and letter of this law if those above leave the government and reappear on the other side of the desk with obvious increaseses in personal income and the apparant approval of the government? The morale and motivation of procurement officials is already adversely affected by "revolving door"abuses of superiors and passing a law which establishes a double standard of conduct will make the problem worse, not better.

Secondly, the American public must be assured that decisions involving billions of dollars and the lives of thousands of service personnel are made as objectively and honestly as possible. This is very important for those high-level officials with the highest public visibility. The public must have faith in the management of the defense budget if we are to retain the existing national support for a strong defense, especially when confronted with mounting federal deficits.

Unfortunately, the public has had good reason in recent years to doubt the objectivity of some officials. While most procurement officials bring the highest integrity to the performance of their duties, well-publicized hirings by major defense contractors of high officials (in some cases immediately after those officials had concluded deals favorable to the contractors) have tarnished the reputation of the Department of Defense. Additionally, we

have had several major weapons programs, such as the DIVAD air defense gun and the MAVERICK missile, where dozens of officials in charge of the programs, including test officers, program managers, auditors and plant representatives, have left federal employment for jobs with the very defense contractors they had previously supervised.

It is difficult to prove a direct relationship between the "revolving door" and the poor performance and skyrocketing cost of these troubled programs. However, this is certainly more than a perception problem, as some seem to think. This problem cannot be solved merely by better public relations or the passage of paper reforms. This situation threatens the national security of our nation and demands corrective action--even if that action adversely affects the lucrative career opportunies of some officials.

It is unfortunate that many people have chosen to approach this legislation from the point of view of the career interests of procurement officials rather than the national interests of the United States. While many members of the armed services and officials involved in the procurement process have welcomed legislation such as this, the official view of the Department of Defense, as stated by Mr. Chapman Cox, is that "the public has been well protected against the potential influences of conflicting public and private interests by the Ethics in Government Act of 1978 [codified at 18 USC §207]." Yet the Staff Judge Advocate at the Air Force's Contract Management Division has stated that 18 USC §207 did not deter the types of post-employment problems typical of the Department of Defense. Government studies, witness testimony, and investigative reporting have established overwhelming evidence that serious conflict-of-interest problems exist, that they have not been properly addressed by current law, and that they

contribute to the decreasing quality and increasing cost of some of our most important weapons systems.

Because the existing regulations are inadequate and because they have been infrequently enforced, I introduced the Defense Procurement Conflict of Interest Act. The amendments added by the Committee watered down this legislation and for that reason I will offer on the floor of the House an amendment which will duplicate what the House passed in the Defense Authorization Act by a vote of 397 to 19. I will also work to get this language passed as an amendment to the Appropriations Act. I will also continue my efforts to make sure that the correct interpretation is given to the langauge in the conference report on the Defense Authorization Act.

Mr. Chairman, I have attached for the record a copy of the original language of H.R. 2554 as it was passed by the House in the Defense Bill, and a copy of the language which came back from the House-Senate conference.

Mr. Chairman, I appreciate the opportunity to discuss these matters with your Committee, and I would welcome any actions your Committee might undertake in this area. Thank you. 1/

1/ Retained in files.

Mr. SIKORSKI. I thank the gentleman and assure him that's why we, in this subcommittee are looking at the whole range of these issues.

Congresswoman from California.

TESTIMONY OF HON. BARBARA BOXER, A MEMBER OF CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. BOXER. Thank you very much, Mr. Chairman, for this opportunity to appear before your committee.

My concern with the revolving door problem began 2 years ago. Unlike Mr. Bennett, who has been working on this issue for a very long time, he tells me over 30 years, I have been here just 3 years. And when I first came to Congress, this revolving door situation was brought to my attention. I realized that thousands of Defense Department employees involved in contract negotiations, in the testing and development of weapons programs were resigning their Government jobs and going to work for the very contractors they were supervising.

Many of these programs had abominable records of cost overruns and shoddy performance. The impression is inescapable to me, and I am sure to you, that the prospect of a job with the contractor may have influenced the judgment of those individuals.

I believe it is critical to stop an employment pattern which does not protect the public against the misuse of its tax dollars. The revolving door syndrome is a definite conflict of interest problem. Conflict of interest, Mr. Chairman, as you know, occurs when people who make decisions affecting public funds are at the same time affecting their own economic futures by the judgments they make during the course of their Federal employment.

Critics of our approach, Mr. Bennett's and mine, to the revolving door have said that the problem is not real, but one of public perception only. I say the problem is real. Each year, defense contractors hire thousands of outgoing Defense Department procurement officials. And as Mr. Bennett has stated, this occurs in other areas of the Government as well.

By some estimates, one-third of those switching sides are working for companies over whom they exercised significant oversight responsibility. This constitutes real conflict of interest. I know it; you know it; the American people know it, when they pick up the newspapers and read about top procurement officials soliciting business from contractors and taking lucrative jobs with the contractors their decisions have affected.

I want to talk a moment about Mary Ann Gilleece, and I am very sorry that you were not able to rouse her to get her here before you. I was outraged—excuse me, Mr. Chairman.

Mr. SIKORSKI. We are not finished.

Mrs. BOXER. You are not finished. I hope that you will rouse her and get her here before you.

I was outraged when I read about the case of Mary Ann Gilleece. What makes her situation particularly distrubing is that she occupied such an important policymaking position. What she did essentially was to hawk her Government-acquired expertise in hopes of landing lucrative contracts. The letter she sent out to contractors

was offensive. She did not disqualify herself from matters affecting those contractors for several weeks after the letters were out. And then she continued to participate in discussions of policy that would affect those very same contractors.

It appears to me, Mr. Chairman, that Ms. Gilleece placed herself in a conflict-of-interest situation. She was involved in matters affecting contractors with whom she had a financial interest. At the least, she should have resigned before a single letter went out. I am shocked that those in charge of the Pentagon's ethics regulations did not insist on this course of action.

Their own regulations make it quite clear that officials are to disqualify themselves from matters affecting a perspective employer. If the individual cannot fulfill his or her responsibilities, say those regulations, he or she should resign. However, it took an inspector general's review, prompted by a request from Chairman Dingell, to finally force her out.

The problem of high-ranking policymakers in the Pentagon is a difficult one. The question is how to fairly treat those who make policy affecting all contractors but who do not normally have significant contacts with individual contractors. The Bennett-Boxer amendment would have restricted Ms. Gilleece's post-Government employment to the extent that she ever exercised a significant procurement function with respect to a particular contractor.

But I am sad to tell you that the revolving-door legislation that was reported by the Defense Conference Committee would not have affected Ms. Gilleece. It only requires that if a procurement official is contacted about a job, he or she must disqualify himself or herself from further activities with regard to that contract. It would have left Ms. Gilleece free to make policy decisions.

I do have suggestions for reforms that the committee might like to consider. First, I hope you will support the original Bennett-Boxer bill, which would have prohibited the Defense Department procurement officials with significant procurement responsibilities from working for the contractor they dealt with. The job ban would last 2 years, and take effect after the individual left the Government.

Second, it is essential that the current regulations of the Department of Defense be carried out; that is, that those who negotiate for a job in the private sector must disqualify themselves from any activity affecting that perspective employer. If that restriction affects their ability to do the job, they should resign.

Third, another approach is to establish a review process for high-ranking officials like Ms. Gilleece, who seek employment from contractors after they leave the Government. It seems to me even if they did not have significant procurement responsibility with a particular contractor, it must be established that they shall still be barred from such employment because of their general procurement responsibilities. This issue is not addressed in the Bennett-Boxer bill.

I would be happy to work with the committee on formulating new legislation or amending the Bennett-Boxer legislation to cover the type of conflict practiced by Ms. Gilleece.

There are cases where the Bennett-Boxer legislation would have prevented the revolving-door abuse such as that so evident in the

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ill-fated Divad Program. No current law or regulation would have prevented this situation, nor would the legislation reported by the conference committee, but the Bennett-Boxer bill would stop that abuse. And I want to take a minute to talk about the Divad.

The Divad air defense gun was recently cancelled by Secretary Weinberger. Tests showed it could never hit the targets it was designed for. As a result, taxpayers had to kiss their $1.8 billion investment goodbye.

That is the same program, and I want the committee to realize this, in which eight officials involved in the development and testing of Divad left the Government for jobs with the weapons manufacturers. It is difficult not to suspect that the decisions made by those individuals about the performance, about the Ford aerospace gun, and its Westinghouse radar may have been less than honest. It is just this suspicion that undermines the reputation of the contractor, the individuals involved, and the faith in the American people in the military procurement system.

I could go on listing dozens of other examples reported in the press over the last several years, but I won't do that because of time. The point to be made is that, at the very least, those with direct 1-on-1 contact with a contractor with responsibility for particular contracts should be subjected to the 2-year cooling-off period as provided for in the Bennett-Boxer bill.

We also know the morale of those within the system suffers when they see their superiors and coworkers abruptly switch sides. The staff judge advocate at Kirtland Air Force Base, Col. Jack Finder, told the Office of Government Ethics in 1982 that the revolving door destroys morale and devastates ethics programs because of the appearance of conflict of interest alone.

Ompal Chauhan, an Air Force industrial engineer at the Boeing plant in Wichita, told the House Armed Services Committee in April:

> That many field people I know have feelings of helplessness, despair and disappointment as they watch their superiors kowtow to further personal ambitions . . .

Neither person felt that current conflict-of-interest regulations and laws were effective in dealing with the problem. That is also the view of former Capt. Jeffrey Rohm, who was the staff judge advocate at Pratt & Whitney and who I am happy to say is with us today. He advocated the same approach that Mr. Bennett and I incorporated in our amendment, a 2-year job ban for those exercising significant responsibility over a contractor.

Mr. Rohm is proof that this restriction is not onerous. He was able to leave the Air Force and find a job with another defense contractor, one he did not directly supervise.

Mr. Chairman, I was very disappointed with the results of the House and Senate conference committee on revolving-door legislation. It only applies a 2-year job ban to a handful of Presidential appointees. We hope it will cover more. It is not clear. It does not cover thousands of others on a lower level who have direct supervision of contracts and contractors. It relies on an honor system for those who are contacted about a job with a contractor to disqualify themselves from further involvement.

Mr. Chairman, I don't believe that this legislation will be any more effective than the current laws and regulations now on the books. And it makes me sad, because Mr. Bennett has worked for so long, and I have worked, and I know that you have worked to see that we have tougher legislation. I still say a limited job ban is the most effective way of eliminating the temptation to compromise consciously or subconsciously the quality and enormous cost of our weapons programs.

The Bennett-Boxer legislation passed by the House is a fair and effective way to balance the individual's right to employment opportunities, with the public's right to expect Government employees to properly carry out their responsibilities. I am very pleased that the committee held this hearing today, because it addresses the Mary Ann Gilleece case, another important aspect of the revolving door in defense procurement, and it may well be that as a result of this hearing, you can join forces with Mr. Bennett and myself to make our bill tougher and stronger.

I certainly know you will help us tell our colleagues that the agreed-upon revolving door provision and the defense authorization bill are not effective enough. Again, Mr. Chairman, I thank you for this opportunity. In this House, we have a habit of going ahead with an issue when it is on the front pages, and then walking away from it. And I applaud you because we have to stick to this until we have solved this problem.

Mr. SIKORSKI. I thank you and applaud you.

Newspaper articles are replete with the stories about the $9,000 Allen wrenches and the billion-dollar Divad's and Mavericks, and things that the taxpayers pay billions, literally billions for, that are oftentimes unworkable and are sometimes just unnecessary. Revolving-door problems can certainly have a bearing, as both of you pointed out, but I want to emphasize, on the pricing of these contract abuses; can't they?

Mr. BENNETT. Absolutely.

Mr. SIKORSKI. So, while the moral and ethical questions are nice philosophical, theoretical discussions, what we are talking about is dollars and cents; isn't that correct?

Mr. BENNETT. That's correct. I think both are important. I think the moral fiber of the country is important, because I think it will be expensive in more ways than one, but the dollar figure is something that we are not going to get an adequate defense if we don't have this sort of thing cleaned up.

Because as you know, and Mrs. Boxer and I all know, today we set a budget figure for defense. So everything you spend for an unwanted item, if you shouldn't have a particular weapon, everything you save from that is going to go into something else that is really needed. So it is really stealing from the defense of America. It is not just stealing from the Treasury.

Mr. SIKORSKI. That's it exactly. We have an ethical issue, which is absolutely vital. It affects morale; it affects the willingness of people to buy into a system of government that's for and by them. There is the dollars-and-cents issue. And then you get into the national security issue.

You made the point very well. People whose lives are at stake don't like to see these things occurring. It affects their health and

safety, and it doesn't allow us to put the money where we can buy a better national security.

Mrs. BOXER. Mr. Chairman?

Mr. SIKORSKI. Yes.

Mrs. BOXER. Mr. Chairman, on that point, you were so right on target. And I think the Divad example is the perfect example, and both Mr. Bennett and I used it today in our testimony, where you see a project that has been canceled because it never really worked, and it never worked from the beginning. And then you look further and find out that eight people who were supervising that contract, lo and behold, went to work for those contractors after $1.8 billion was wasted. And those were the people who were saying to the Secretary of Defense, "Oh, this is a good program. This is good. It is going to work, even if there are problems, even if there are time delays." So it is ethics, and it is dollars.

Mr. SIKORSKI. We talk about the revolving door, and it is a two-way door. As I understand it, about 1,000 people a year go from the defense industry into Government dealing with the defense industry, 2,000. We also have it going the other way, and the emphasis had been on the other way. And there is some benefit to this process.

The problems exist in the kind of instances that you pointed out where the very people on one side of the table—I think, Mr. Bennett, in your words—ends up on the other side of the table talking with the people they had supervised or who had supervised them. Beyond that, in the Mary Ann Gilleece instance, there wasn't a revolving door. She looked for private sector employment, and then went into kind of an emergency-exit approach. She went into this consulting situation. So it is kind of a hybrid of revolving door.

Both of you are familiar with that case. There is some real question as to whether the compromise, the so-called compromise conference report, even touches the Mary Ann Gilleece instance.

Mr. BENNETT. It does not.

Mr. SIKORSKI. It does not?

Is that your opinion?

Mrs. BOXER. That is correct, and we have some concern that even our bill doesn't cover her if she didn't have direct supervision over a contractor. We don't know that. If in fact she did, she would be covered by our bill, but if she didn't have significant responsibility over a particular contractor, she may not even be covered. That's why in my testimony I strongly suggested that you have a very important role to play, Mr. Chairman, in your committee in helping us to strengthen that bill so that we can cover that type of a case.

My colleague, I think, wants to add to that.

Mr. BENNETT. The only thing I would like to add is I am a pragmatic realist. I like to pass something that does good rather than attempt to do a lot of things that are good and pass nothing. And there will be other Members of Congress that will come along later—I used to sit in this room 30 years ago as a member of the Armed Services Committee—and there will be other people that will come along and correct some of the things we would like to correct.

The revolving-door bill, which Mrs. Boxer and I introduced, is a fairly narrow bill. It is a real simple bill. It says if you have sat on

one side of the table for the Government, contracting with somebody else like General Dynamics, you can't do what the Assistant Secretary of the Navy did after handling hundreds of millions of dollars of adjustments with General Dynamics. You can't move over and become employed by him within 2 years. It is very specific.

You might say, well, that is strange; 2 years and 1 day, you can escape everything; that's true. It is not perfect, but it is a real thrust forward for doing something good. And in the case of Mrs. Gilleece, that situation is different in that why she is now being looked at is the fact that she had to do with fixing policy. But that is not identical with the bill which I and Mrs. Boxer introduced. We didn't go into fixing policy. We went into handling contracts with a specific contractor on the other side of the table.

Now, I feel that something that would prohibit a policymaker from getting involved would be an improvement. But I just want to say in 1985, I would like to pass the original Bennett-Boxer bill, rather than waiting until 1995 to pass something that was a little stronger. I would like to pass what we can in our day. And Congress voted for the Bennett-Boxer bill by whatever it was to less than 20 votes.

In other words, it was an overwhelming vote. We haven't had a vote like that on almost anything for years, an overwhelming vote, a significant vote on a significant piece of legislation overwhelmingly passed that way. And it specifically turned down the watering down of the House Armed Services Committee, and it specifically turned down the weaker version that came out of the conference. So it is real clear that this is a thing that the people do agree is a good thing to do.

I would like to do more, but I think right now as far as our military thing is concerned, I would like to do this and be sure I got it done. And the way we are going to do it, of course, is going to be on the appropriation bill. I will offer the Bennett-Boxer amendment as an amendment to the appropriation bill, and it will go to conference at that time.

One difficulty we have—I don't want to take too much of your time. A difficulty we are now having in Congress is the fact that we have conferees sometimes who are overwhelmingly opposed to the things that the House acted on. There were only 3 or 4 out of 30 people or thereabouts in the conference that took Mrs. Boxer's and my position, which was the overwhelming position of the House of Representatives. But there were only two or three on that conference that took that position. All the rest of them are opposed to it on both sides of the table. That's a real error in our procedure.

Mr. SIKORSKI. A similar situation, it is a live case, where you have got people sitting down at the table principally there to negotiate the perspectus of the bodies they come from. But with other agenda items actually in existence——

Mr. BENNETT. Well, in that conference they even spoke in opposition, even the people that are bound not to. And the chairmanship was turned over to people who are opposed to my point of view.

Mr. SIKORSKI. There are a lot of points that need to be made. Mary Ann Gilleece didn't specifically directly supervise or negotiate, but everything she did in terms of weakening certification,

work measurement, field audit support and on, and on, and on, affected $140 billion worth of business—how these people got paid, when they got paid, and if they got paid. So she had a—not to say that she didn't directly supervise, but she had a direct financial impact on these people.

It also raises the appearance issue. So my point was not that we don't go far enough in what you do, nor in any way meant to be critical, because I am a cosponsor. The point is that we should not rest if this authorization bill gets passed, or even if your proposal gets attached and finally becomes law.

Mr. BENNETT. In the first place, it should apply to all the government. The only reason it applies to this is because Mrs. Boxer and I saw an opportunity to put it through our committee.

Mr. SIKORSKI. Well, I think your important work in this area is crucial and I commend you for your contribution for the long run. I look forward to working with you and helping slow down and monitor the revolving door.

Mr. BENNETT. We thank you for holding these hearings. God bless you.

Mrs. BOXER. I appreciate these hearings, Mr. Chairman.

Mr. SIKORSKI. I'm sorry we have a member from New York who came in. Mr. Bennett.

Mr. BENNETT. Oh, excuse me. Yes, sir.

Mr. SIKORSKI. I'm sorry.

Mr. BENNETT. That's OK.

Mr. SIKORSKI. Representative Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. I certainly want to welcome the gentlelady from California and the gentleman from Florida and commend them for their efforts in trying to strengthen our procurement policies and to avoid the kind of abuses we have had in the past.

I would like to ask just a few questions with regard to what happened in the watering down process. Why is it that high level officials are not being interpreted as being part of your proposal?

Mr. BENNETT. Well, I won on a very narrow line. The position of the Senate was they didn't want to touch high-level people at all. Their law didn't apply to high-level people. So I said to the Senators, "I have read your provisions. They are almost nothing. They apply mostly to lower level people, but I will accept every word, every comma, every period, every cross of everything. I will accept everything the Senate brings, if you will just allow me to have the high-level people."

Well, we bickered and bickered, and the language that finally came out was about two or three sentences. And they were crucial sentences and crucial judgments made in that conference. One of them was, they said the principal—it had to be the principal negotiator. Well, I said I am not going to buy that. It has got to be a principal—it has got to be a major or principal negotiator. And so we won a little victory on that.

The other one was the fact that they had to be people appointed by the President, all people appointed by the President. And we discussed specifically the military people in the conference. We specifically discussed military people, and I said that will go all the way down to second lieutenant, and it was agreed to by the Sena-

tors it would. And yet, after it was all done, they raised questions in the press and otherwise that no military people would be covered.

Well, of course, the legislative history, is that it was, they were covered, but I don't have to rely upon that. I can read English. I write. I have published six or seven books. I can read English. And the English of it does include military people, and the Department of Justice has now come out with a decision clearly saying that, even though the Department of Defense—oh, no, it couldn't do that, but they finally said, "Well, we will abide by whatever Department of Justice will say."

And the Department of Justice has now made a ruling that it does include all military people; that is, all the officers, all who are appointed by the President. That is from second lieutenant up. So it is broader than they apparently had hoped to make it, although they had agreed to make it that broad. The problem about is it does not do what the original bill did, which was to say regardless of how low and regardless of how high you were, if in fact you sat on one side of a table and negotiated a contract with somebody else on the other side of the table, within 2 years you couldn't go to work for that person.

That's the law which I would really like to have. But they were saying, "Well, we will give you that for some of the low people, but we won't give you that for the Secretary of the Navy or anybody like that. We don't want to do that. We just want to do the little people." And I was saying I want to do the big people. If you are going to leave somebody out, leave somebody out at the bottom. Don't leave them out at the top. They are the ones I want at it.

Now, I want to say to you, I am not a person that points fingers of criticism at anybody. The person that really brought this matter to my attention was the Assistant Secretary of the Navy, Mr. Saywer. I am very fond of Mr. Sawyer. He is a nice man, and I don't think he really felt he was doing anything wrong. But he was doing something wrong because he helped to negotiate this tremendous hundreds of millions of dollars with General Dynamics. Then he went out immediately and took a job, a high-ranking job in General Dynamics. That is obviously wrong.

It doesn't mean he is morally wrong. It doesn't mean he is sinful. It means he is doing something and not in the public interest. It is a conflict of interest. When a person has two masters to serve, he is getting into real trouble, as the chairman has said. And that shouldn't occur. I am not saying that he is not going to heaven or he can't be forgiven or anything like that. I am saying that what he did was wrong for our country to have done, and that must be corrected for the future. It won't affect him retroactively, but it should never again.

And the spectacle of high-ranking people doing that sort of thing is very debilitating for people that are on the lower level. And furthermore, you see the way they wanted to have it on the Senate side, they really wanted to excuse all the high-level people and put the burden on the little people. But what is a little person going to do? A little person sees that if you are Secretary of the Navy or something, you can get by with anything. But if you are a GS-11 or

something like that, it becomes automatically sinful. There is too much of that in the world.

I mean the top people are the ones that have the responsibility, and they are the ones, of all people, that ought to get the penalty.

Mr. GILMAN. Mr. Bennett, under the existing Justice Department interpretation in the Bennett-Boxer measure, do we now take care of high-ranking as well as lower people?

Mr. BENNETT. Yes, we do.

Mr. GILMAN. And is the Department now going to abide by that decision?

Mr. BENNETT. Well, they will have to. I must say that I have a chance to get away from all that problem by the appropriations process. In other words, the Bennett-Boxer bill is going to be attached to the appropriation bill. I'm sure it will pass overwhelmingly. The only question is what the conferees will be like. I hope they won't be like the ones that I had in the Armed Services Committee, because I had very few friends in the Armed Services Committee in the conference. They didn't like the idea.

Now, I hope the Appropriations Committee will be different. I understand they are not going to appoint Mrs. Boxer and I as conferees. I would like to be there, and I would like Mrs. Boxer to be there because it needs some people that really are for it in the conference. I don't know what the appropriation conferees are going to be like, but of course it can go down the tube again there if they had the same people.

I never understood why the Senate felt the way they felt about it. I think there is some feeling that people who are in this position of giving out contracts in some way are hurt by the Government saying they ought to comply with the conflict of interest. That has always been a mystery to me, I guess because of my own background. My father was a Federal employee for 50 years, and he was happy to be a Federal employee. He wasn't looking forward to jumping into private industry at the end of it. He thought it was a great way to serve mankind.

And I feel like the job that you and I have is the same way. I don't really see why this all-obsessive view about somebody in the Department of Defense must get out and work for private enterprise. I don't understand it. And, of course, our bill applies to where you are operating on the other side of the table with a particular contractor. There are 20,000 prime defense contractors. So you could pick 1 of 19,999 that were not involved in that to go work for if you want to right away. But this only says that in 2 years you can't go to work for that same person you worked on the other side of the table from.

Mr. GILMAN. Does the gentlelady from California have any comments?

Mrs. BOXER. Just briefly. I think it is very important to note that the conference committee took the Bennett-Boxer bill and basically wanted to destroy it. I mean it is just as simple as that. I mean if it wasn't for Mr. Bennett sitting in on that conference, and Mr. Mavroules, who tried to help, we would have gotten nothing.

Now, what we did get is a very narrow interpretation by the conferees that it would only cover a handful of Presidential appointees. Thanks to Mr. Bennett's persistence and now the news that he

gives us today, is that Justice has said it will cover the top military people which does expand it from covering 60 people, to covering perhaps several thousand.

But what I want to put on the record today is that the Department of Defense still interprets it the other way, still inteprets it that it just affects a minuscule number of people. And the final point I wanted to make is that Mary Ann Gilleece is not affected in any case because she didn't have that hands on with a particular contractor. As Mr. Bennett points out, we felt we couldn't cover every single case in the world, but this is an area for your committee. And I would really urge you to bring something forward that could take this issue a little further; that can reach to the Mary Ann Gilleeces who use their position in a way that I consider to be immoral.

Mr. GILMAN. I note that Mary Ann Gilleece had written to the Ethics Committee. What sort of a response did she get at the time she wrote to the Ethics Committee inquiring about her proposal?

Mr. BENNETT. I don't know.

Mrs. BOXER. Maybe my staff might know this.

I'm sorry, what was the question?

Mr. SIKORSKI. We are going to have the deputy inspector general next who can speak directly to that. In fact, the report speaks to how DOD's ethics officer dealt with it.

Mr. GILMAN. That was the DOD officer who responded on the ethics?

Mr. SIKORSKI. Yes.

Mrs. BOXER. My understanding is that the DOD ethics people did advise her to submit some type of disqualification statement, but I am not sure that she followed through on that.

Mr. BENNETT. I would like to add one little thought there. It is true if the Government ethics law, which was passed—I already mentioned it was weakening from what we originally introduced. It is true if that were vigorously followed up—assuming it could be—I'm not sure it can be, but if it were vigorously followed up, we would have an improvement. But we still wouldn't have this specific statement that it is wrong to do what is in the Bennett-Boxer bill, and that is an important thing to do.

It is clear cut. It is not complicated at all. And that, I think, would be a big improvement, having a clear-cut decision about what you ought to do in these circumstances.

Mr. GILMAN. To your knowledge, has there been any enforcement under either the revolving door legislation that was adopted or the ethics legislation that penalized somebody who violated a revolving door type of situation?

Mrs. BOXER. Well, the law has not even really been signed by the President. At this point, it would be part of the Defense authorization bill. So there is nothing under our bill; there has not been a test case at this point.

Mr. GILMAN. In the Ethics Committee or the DOD's ethics rulings, has there been any violations that have been enforced?

Mrs. BOXER. I wouldn't know the history of DOD, but I could tell you this: I don't believe that they are doing enough in this area with their own laws, which you may bring out later with your witnesses today.

Mr. BENNETT. My memory is that there was only one person ever prosecuted, and certainly not more than five or six. My memory is that nobody has every served any penalty under that, but I may be wrong under that. But they did testify before our committee. But obviously they were not enthusiastic about doing it because, you see, in the executive branch they really have somewhat of a problem.

If Congress does not specifically say what is right or what is wrong, and what is going to have a penalty, and you leave it up, a little fuzzily, to an agency to enforce a general thrust, that is really kind of tough on the people that have to carry that out. And that is the reason why the Bennett-Boxer bill is such a good bill, because it is very specific. You may say other things ought to be prohibited, but what it does prohibit, it doesn't mess around with it. It prohibits it, and it puts heavy penalties not only on the company, but on the people that are involved.

The executive branch would have no problem with that, because it is clear. What is difficult about the ethics act is that there is a lot of gray in there where they have to make decisions, and they see the problem from the standpoint of the person that is doing this contracting. They feel like he might—you would be surprised that even on the staff of the House Armed Services Committee, I don't think I have got more than one person on that very large staff that is sympathetic to the Boxer-Bennett proposal.

Why? Well, they know so many people in the Department of Defense who are making a living there or who are in the Government, who are going to move out and go into that, that they see it from a standpoint of the individual's problem. Yesterday I was at lunch, and I was surrounded by 10 or 15 people of this type. And they said to me—they were military people. All of them were in uniform. And they said "How can you hamper my career like this?"

And I said:

> Well, I notice the ribbons that you are wearing, and I notice that I am wearing. Your ribbons—I am not trying to be something better than you at all, but your ribbons—you were never fired on by the enemy. You were never fired back on by the enemy. You are unlike most military people. You are military people who have been in the administration of contracts and running things like that. And I don't think you deserve all that sympathy.

I think you are wonderful people. I am glad you served your country. I am glad you are serving your country now. It is very noble what you are doing, but you are looking at it rather selfishly. The vast majority of military people, an infantry platoon leader, a company commander, a battalion commander—he has no opportunity to do anything like this. These are tremendous specialties which are developed in certain narrow fields in the event.

Sometimes people attribute to themselves all the military, but, you see, they are administrative military people. They are people that are carrying out administrative acts. They deserve sympathy. They are human beings. They make sacrifices for their country, but they don't deserve putting on their back the things the people do in combat and say, well, now you take care of me now in my employment things because you are being hard on the military.

Well, being hard on a particular type of military which has to do with contracting and in a very narrow area, it is not unfair. This is not an unfair provision. It just says you have been a contractor for the Government, you can't turn around and go to work for them. That is a very clear-cut thing. I don't see why all this sympathy is there, but it is there. It is there on the staff, or the House Armed Services Committee, it is in the Senate. It is in a majority of the members that sat on that conference.

As I say, there were only 2 or 3 members of the conference of 30 men and women that had any sympathy with what the House had passed by a vote of, whatever it is, 300 and some odd to 19. There were more people in that conference who voted against the provision—the majority of the people that voted were actually on that conference.

Mr. GILMAN. Mr. Bennett, did the Department take any official stand on your bill, either for or against?

Mr. BENNETT. Yes, they were opposed to it. The Department didn't like it.

Mr. GILMAN. And what rationale did they express?

Mr. BENNETT. Well, they are going to be before you now. I think maybe I have explained a little of it. The fact that they have another law which, if they administer it properly, they might get at some of these things. But it is difficult to know what administering properly is, when the words are fuzzy. And this bill is not fuzzy.

They would be better explaining why they feel the way they feel about it, and maybe they have changed their mind. I hope so. Anyway, I want to say this about it, having come from a Federal employee family myself. Most Federal employees are glad to take the definitive action by the U.S. Congress.

In other words, I don't know a lot of gripers in the Government about what the Congress has decided. It is up to us to decide definitively, make black and white out of it, and that is what we ought to do. When that is done, I don't think you will have any controversy at all from the Department of Defense in any way. That's my feeling about it. I think it is the fact that we have not been firm about it ourselves.

Mrs. BOXER. If I may quickly say that I was in a debate—a nationally televised debate—with Assistant Secretary of Defense, Michael Birch, on this matter when we first introduced our bill. And he was violently opposed to the bill, and any other bills that we have that deal with procurement reform, because basically his position was—and I share Mr. Bennett's hope that this is changed—it is none of Congress' business. It is as simple as that; that we are invading the flexibility of the Department of Defense.

And I just reject that wholeheartedly from my knowledge of what the balance of power is all about. But that was what the basic philisophical opposition was; this is a matter that the Pentagon can handle and Congress shouldn't be involved in it.

Mr. SIKORSKI. And as Mary Ann Gilleece testified before the Senate, creating a disturbance with both the Republicans and Democrats, that system is "99$^{44}/_{100}$ pure." The system is not in need of reform. So if you begin with that mindset, it leads to the kinds of conclusions that you get in opposition to reform.

Mr. GILMAN. I want to thank Mr. Bennett and the gentlelady from California, Mrs. Boxer, for undertaking this initiative. And you certainly have pointed out some of the concerns that many of us have, with regard to procurement policies.

Mr. BENNETT. I want to thank you. If your interest in this and also some other things we have in common, like fighting drugs—any time there is an evil to put down, I always expect you to be there.

Mr. GILMAN. The gentleman from Florida has been an outstanding battler in our battle against drugs. Thank you.

Mr. BENNETT. Thank you.

Mr. SIKORSKI. Our next witness is the Deputy Inspector General Derek J. Vander Schaaf who reported on his investigation of the Gilleece matter. We thank you very much. Your report is quite helpful. I know that some of the questions that were just asked of the last panel can be answered by you, and we will do that through the questioning.

There are some preliminaries I have to ask you. Do you have any objection to a hearing without counsel?

Mr. VANDER SCHAAF. No, I don't. In fact, I have counsel with me. If I get into a problem, Mr. Chairman, I'll certainly converse with him, if necessary.

Mr. SIKORSKI. Very good. The rules of the House and subcommittee are on the table in front of you. Do you have any objection to being sworn in?

Mr. VANDER SCHAAF. None whatsoever.

Mr. SIKORSKI. If not, will you stand and raise your right hand?

[Witness sworn.]

Mr. SIKORSKI. Thank you.

In the interest of time, we are going to ask that you consolidate your statement, which will appear in full in the record, and summarize as best you can. I recognize that is not easy, and we will draw back on your report as we go through the questions.

TESTIMONY OF DEREK J. VANDER SCHAAF, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, ACCOMPANIED BY COL. DONALD R. KEENEY, DEPUTY ASSISTANT INSPECTOR GENERAL FOR SPECIAL INQUIRIES

Mr. VANDER SCHAAF. Fine, Mr. Chairman, I will try to do that. I have already consolidated this statement down to about eight or nine pages.

Mr. SIKORSKI. I tried consolidating my own opening statement. I gave up and attached it to the opening statement.

Mr. VANDER SCHAAF. I will do what I can for you in this way, and if you will pick up some of the points in your questioning, I think it would be helpful because I can also followup on some of the testimony that Congresswoman Boxer and Congressman Bennett just gave.

I am appreciative for the opportunity to speak to this committee and give you some of the opinions of the Office of Inspector General on the revolving door problem in general, and the Gilleece case in particular.

As far as the circumstances in the Gilleece case go, they are addressed in the report which my office submitted and the Department made available to the public after the completion of our investigation. That report is attached to my statement; therefore, I won't get into it in any detail.

I want to emphasize a point that Congressman Bennett made, and that is the fuzziness of some of the language in the appropriate statute, section 208 of title 18. That fuzziness in this particular case related to the use of the words, "particular matter," and what constitutes a "particular matter," and what constitutes "negotiations" under that section of law. These aspects gave us some difficulty in our report. And I will be happy to answer your questions on that.

Second, we did conclude that Ms. Gilleece violated section 7(a) of the Department's Standards of Conduct regulation by engaging in activities that placed her private interests in conflict with the duties and responsibilities of her position. Other conclusions that we reached were that her actions and the ensuing publicity so compromised her ability to perform her rule-making and policy-setting role, that she could no longer effectively serve the Department in such a position.

The lack of clarity in the Department of Defense Standards of Conduct regulation and in the advice Ms. Gilleece received concerning her regulatory responsibilities indicated that a more structured approach must be used when advising senior officials. The miscommunication that occurred between Ms. Gilleece and Mr. Ream, the Standard of Conduct attorney in the Office of the General Counsel may not have occurred if a concise, written summary of their meeting had been prepared.

As far as recommendations go in our report, we recommended that Ms. Gilleece be removed from acquisition-related responsibilities; that the Office of General Counsel prepare a formal outline advising senior officials on the standards of conduct, and that the Standard of Conduct Officer provide a written summary to them of any meetings they have with him in the future. And finally, we recommended that the Standard of Conduct Regulation be revised.

On August 19, 1985, we forwarded this report to the Department of Justice for further review. They responded back to us on August 28 and requested more documentation, which we provided on September 20. We also told them that as far as the Office of Inspector General was concerned, we found nothing to indicate Ms. Gilleece actually conducted negotiations concerning prospective employment with defense contractors as we understand the definition of negotiations.

Now, you also asked me in your letter to address what we in the Office of the Inspector General believed was needed in revised legislation to deal with this commonly referred to "revolving door" problem. In my opinion, there is a need for regulations and policies which deal with the perception of conflict of interest, as well as with actual verifiable conflicts. Often there is no clear proof of a statutory criminal violation, but the public is left with a bad taste and loses confidence in the institutions of government.

The previous witnesses discussed that in some detail. I do believe that the provisions in the currently pending conference report on the defense authorization bill for fiscal year 1986 are certainly

better than nothing. However, we believe that they do not go far enough, and that any followon legislation should include some additional elements. Let me briefly go over those elements.

One, new legislation ought to require a cooling off period between the time an employee stops exercising procurement-related responsibilities and begins working for a Government contractor with whom he or she had a continuing or substantial working relationship.

Second, we should impose contractual sanctions on contractors in addition to criminal penalties for violations, and enforce the sanctions through terms in Government contracts. These sanctions should be in addition to civil or criminal actions against the individual.

Third, specifically identify those cases of official duties which would be subject to cooling off. Fourth, make any changes in the laws applicable to all branches and activities of the Federal Government, not just the Department of Defense.

And fifth, increase the amount of information that former Government employees with procurement-related duties must report regarding their employment with contractors, and require that the reports be analyzed for possible violations.

We have some audit material on procedures for filing financial disclosure statements which you might want to discuss in a moment. There are some problems in that area. And, finally, all provisions with respect to a particular matter should apply uniformly throughout the Government to all types of civilian officials as well as to members of the armed services. However, and here I think I differ with Mr. Bennett a little. Some type of exclusion must be adopted for policy and rule-making officials whose duties could financially impact large numbers of or all contractors I can clarify my intent on that a little later.

Any legislative scheme should provide administrative remedies enforceable through terms in Government contracts, in addition to the criminal sanctions. Experience with the conflict of interest cases has shown that establishing evidence of intent necessary to obtain a criminal conviction is difficult. The heads of executive departments and agencies should be given the authority to impose administrative penalties against former Government employees and contractual penalties against companies whom they improperly go to work during any cooling off period.

Along this line, I should add that we in the Department, since the enactment of the Ethics in Government Act have not had a single conviction for violation of that act with respect to the revolving door provision. There has been one company that has been convicted, and there were some officers involved who, as Mr. Bennett said, had switched sides, but they were not personally convicted. Only the corporation was found guilty in that particular case. We believe that you are not going to get prosecutors to take cases that they might lose. Finally, the general counsel is making some revisions to DOD Directive 7700.15 which governs the forms provided for postemployment reporting to former officials. We have been told that the revised directive will require more precise information about a person's specific duties during and after Government

employment. The directive will also require reviews of the accuracy of the data reported.

That concludes my prepared remarks, Mr. Chairman. I am ready to answer your questions.

[The statement of Mr. Vander Schaaf follows:]

STATEMENT BY

DEREK J. VANDER SCHAAF

DEPUTY INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to appear before your Subcommittee this morning to discuss a recent investigation conducted by the Office of the Inspector General. This investigation involved alleged wrongful acts by the former Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management). I also understand that you would like me to discuss possible remedies for the actual and perceived problems which can occur when a Government official leaves Government and accepts employment with a company over which that official had exercised decision making duties.

I do not intend to repeat the specific circumstances surrounding this case. Those circumstances are addressed in the public report which I have appended to my statement. I do, however, want to discuss certain aspects of this case which help illustrate some of the broader issues that must be considered in dealing with conflict of interest "revolving door" matters.

First, with respect to possible violations of criminal law, Section 208 of Title 18, United States Code, establishes criminal penalties for certain conflicts of interest by Government personnel. We found no evidence that Ms. Gilleece was involved in any matter which we considered to be a "particular matter" (as that phrase is used in the statute) involving any of the firms she contacted. Further, although we found that Ms. Gilleece's contacts with these firms were at least solicitations of future business, and conceivably an attempt to open negotiations, we had no evidence of any discussion or expression of interest which we would construe

as the beginning of negotiation. This particular finding pointed out to us a need to better define the meaning and application of terms "particular matter" and "negotiations" as used in Section 208 of Title 18, United States Code.

Second, we concluded that Ms. Gilleece violated Section VII A of our own Department of Defense Standards of Conduct regulation by engaging in activities that placed her private interests in conflict with the duties and responsibilities of her DoD position. We also concluded that under Section VII D of this regulation, Ms. Gilleece had a duty to formally disqualify herself from "any official activities" which would create a conflict of interest or the appearance of a conflict of interest with her private interests. We concluded Ms. Gilleece created a conflict between her official duties and her private interest in preparing to establish a consulting firm that she believed would only be viable if it were retained by a substantial number of major Department of Defense contractors. Therefore, she was required to disqualify herself from the policy and rule making responsibilities of her office to avoid creating the appearance of a conflict between her private interests and her official activities.

We also concluded that:

o The actions taken by Ms. Gilleece, and the ensuing publicity, so compromised her ability to perform her rule making

and policy setting role that she could no longer effectively serve the Department in such a position.

o The lack of clarity in the Department of Defense Standards of Conduct regulation and in the advice Ms. Gilleece received concerning her regulatory responsibilities, indicated that a more structured approach must be used when advising senior officials. The miscommunication which occurred between Ms. Gilleece and Mr. Ream, the Standards of Conduct attorney in the Office of the General Counsel, may not have occurred if a concise, written summary of their meeting had been prepared.

o Although Ms. Gilleece testified that her letters were not intended to be solicitations of business, they gave the appearance that they were, and were perceived as such, by many of the recipients.

In our report we recommended that:

o Ms. Gilleece be removed from acquisition-related responsibilities.

o The Office of the General Counsel prepare a formal outline for advising senior officials on Standards of Conduct and, in the future, furnish them with a written summary of its advice as soon as practicable after responding to their specific inquiries.

o The "Standards of Conduct" regulation be revised to more clearly state the responsibilities of the Department of Defense employees and supervisors with regard to recusals from actual or potential conflicts of interest and "affiliations."

We also noted in the report that Ms. Gilleece's Executive Assistant, who planned to retire from Military Service and join Ms. Gilleece in the proposed consulting firm, played a part in contacting the Government contractors. We recommended that his actions be reviewed by his supervisors, other than Ms. Gilleece, for possible Standards of Conduct violations.

On August 19, 1985, we forwarded our report of investigation to the Department of Justice for a determination of whether a prosecutable offense occurred. The Justice Department responded on August 28, 1985, with a request for back-up documentation. We provided the additional documentation requested by the Justice Department on September 20, 1985. We also reported that we were unable to find any evidence relative to one of the four elements of a violation of 18 U.S.C. 208(a). Although her contacts with firms were solicitations of future business and an attempt to open negotiations, we found nothing to indicate Ms. Gilleece actually conducted "negotiations" concerning prospective employment with defense contractors.

You asked for our views on what additional legislation may be needed to avoid both the perceived and actual problems associated

with the phenomenon commonly referred to as the "revolving door." In my opinion, there is a need for regulations and policies which deal with the perception of conflict of interest, as well as with actual verifiable of conflicts. Often, there is no clear proof of a statutory criminal violation, but the public is left with a bad taste and loses confidence in the institutions of Government. Certainly the numerous "revolving door" cases reported over the years have reduced confidence in the Government, but not one single case involving post-Department of Defense service has been prosecuted where the Government employees were convicted.

A number of bills have been introduced in the House and Senate which are intended to correct the problems associated with the "revolving door." Several pieces of "revolving door" legislation are contained in the pending Department of Defense FY 1986 Authorization Bill. I believe these provisions are worthwhile and hope that they remain in the version that passes Congress. However, the Office of the Inspector General believes additional measures should be considered to supplement those in the Authorization Bill. We believe that in order to address fully the "revolving door" problem, such additional legislation should contain the following elements:

o Require a cooling-off period between the time an employee stops exercising procurement related responsibilities for the Government and begins working for a Government contractor with whom he or she had a continuing or substantial working relationship

o Impose contractual sanctions on contractors, in addition to criminal penalties for violations, and enforce the sanctions through terms in Government contracts. These sanctions should be in addition to civil or criminal actions against the individual.

o Specifically identify those classes of official duties which would be subject to this "cooling-off" requirement.

o Make any changes in law applicable to all branches and activities of the Federal Government.

o Increase the amount of information which former Government employees with procurement-related duties must report regarding their employment with contractors, and require the reports to be analyzed for possible violations by a person's former employing department or agency.

o All provisions with respect to a "particular matter" should apply uniformly throughout the Government to all types of civilian officials, as well as to members of the Armed Services. However, some type of exclusion must be adopted for policy and rule making officials whose duties do or could financially impact large numbers of contractors.

With respect to the last point, I believe that there must be some type of exception for officials with broad policy or

rule making responsibilities, if there is to be any hope of continuing to attract highly qualified individuals to Government service. Most Government employees are involved with a very limited number of contractors on a substantial or continuing basis. When literally tens of thousands of firms contract with the DoD, I do not see how restricting employment opportunities (a cooling-off period) with those few companies would place an undue burden on a large number of persons. On the other hand, application of strict post-employment rules to certain policy making officials could effectively preclude post-Government employment in their field of expertise and represent a real burden and a continuing financial sacrifice.

Any "cooling-off" period should be of reasonable length to avoid the perception of a conflict of interest. However, it should not be so long that it could be interpreted as a penalty accompanying certain types of Government service. I think two years is a reasonable period. Also, in order to be disqualified from accepting employment with certain Government contractors for a certain period of time, the person's Government procurement-related duties must have been continuing and substantial with respect to that contractor, and the person must have served in a decision making position with respect to that contractor.

Any legislative scheme should provide administrative remedies enforceable through the terms of Government contracts in addition to criminal sanctions. Experience with conflict of interest

cases has shown that establishing evidence of intent necessary to obtain a criminal conviction is difficult. The heads of executive departments and agencies should be given the authority to impose administrative penalties against former Government employees and contractual penalties against the companies for whom they improperly go to work during any cooling-off period.

There should also be a more precise description of what acts constitute negotiations for employment. As it stands now, there is no clear definition in the law. A Government employee and a Government contractor may be conducting discussions regarding future employment which are not a "negotiation" and, therefore, not against the law. The same situation currently exists as to what constitutes a "particular matter" as used in 18 U.S.C. 208.

Finally, there is a clear need to enforce the reporting requirements already imposed upon former Government employees working for Government contractors. In a June 1985 report (NSIAD-85-89), the General Accounting Office concluded that about 70 percent of individuals required to report post-Government employment in 1983 did not do so.

Under Section 2397 of Title 10, United States Code, individuals are required to file a report annually (Form DD-1787) on their Defense-related employment for up to four years after leaving the Department of Defense. The requirement applies to

all former civilian employees, who were paid at or above the rate of GS-13, and all former military officers, who had at least ten years continuing service and had obtained the military rank of O-4 or above, and who go to work for a defense contractor or as a consultant to a defense contractor. In addition to the estimated low level of compliance with the reporting requirement, my office concluded that the Department should develop and use a more effective form for reporting post-Government employment, and that Defense Agencies and activities should review the individual submissions to assess the potential for conflicts of interest. The current form makes it difficult to relate past DoD employment to a person's current position with a DoD contractor because, at times, it allows people to provide nonspecific answers to the questions relating to DoD and contractor employment. Furthermore, we found that there was no mechanism within DoD to monitor individual compliance, nor was there any follow-up to determine if an individual did or did not file the required forms. Most reviews of these forms did not go beyond the applicability and completeness of the form.

The General Counsel is making revisions to DoD Directive 7700.15 governing the forms required for post-employment reporting by former officials. We have been told that the revised directive will require more precise information about a person's specific duties during and after Government employment. The directive will also require reviews of the accuracy of the data reported.

DEPARTMENT OF DEFENSE
OFFICE OF THE INSPECTOR GENERAL
SPECIAL INQUIRIES

REPORT OF INVESTIGATION

CASE NUMBER
85C0000101

DATE
August 16,. 1985

ALLEGATIONS OF CONFLICT OF INTEREST
AGAINST THE DEPUTY UNDER SECRETARY OF DEFENSE
FOR RESEARCH AND ENGINEERING (ACQUISITION MANAGEMENT)

August 16, 1985

85C0000101

ALLEGATIONS OF CONFLICT OF INTEREST AGAINST THE DEPUTY UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING (ACQUISITION MANAGEMENT)

I. INTRODUCTION

On July 3, 1985, the General Counsel, Department of Defense (DoD), requested that the Office of the Inspector General, DoD, conduct an inquiry into allegations of a possible conflict of interest involving Ms. Mary Ann Gilleece, the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management). The allegations ensued from Ms. Gilleece having called and written to a number of DoD contractors concerning her plans to establish a consulting firm when she left Government service. The purpose of the inquiry was to determine if the contacts Ms. Gilleece had with these firms constituted a conflict of interest and affected the subsequent performance of her official duties.

II. BACKGROUND

Beginning in January 1985, when a reorganization that would effectively abolish her position was announced, Ms. Gilleece became increasingly concerned about her future employment. She wished to stay in the Washington area in a position comparable to her current one. Believing she would have difficulty finding a private position that would be consistent with these needs, Ms. Gilleece tried unsuccessfully to get assurances concerning her future in the DoD. Later, when it became apparent that she would not be in line for a position in the realigned organization, Ms. Gilleece still had not found a suitable position in the private sector. She, therefore, developed a plan to establish a consulting firm in the Washington area, and took the initial steps to establish such a firm while still employed by the DoD.

Prior to initiating contacts with DoD contractors concerning her future employment plans, Ms. Gilleece had a meeting on April 30, 1985, with Mr. David Ream of the Office of General Counsel, DoD, who is the attorney principally responsible for standards of conduct advice and policy for the Office of the Secretary of Defense. Captain Carl M. Mayer, SC, USN, Executive Assistant to Ms. Gilleece, who planned to retire and join Ms. Gilleece in establishing the proposed consulting firm, was also present at this meeting.

During their April 30, 1985, meeting with Mr. Ream, Ms. Gilleece and Captain Mayer informed Mr. Ream of the duties they performed in their current positions and discussed in general terms the type of services their proposed consulting firm would provide. They then asked if providing the contemplated type of services to DoD contractors would be permissible under existing

law. In addition, Ms. Gilleece and Captain Mayer told Mr. Ream that before terminating their Government employment they wanted to make preliminary contacts with DoD contractors to determine if the contractors would be interested in the type of services they would offer, and asked for his advice in this regard. They did not, however, show Mr. Ream either at that meeting or later, the letters and the material they planned to enclose with them or inform him of the number of contractors they planned to contact.

Mr. Ream testified that as a result of the discussion, he believed that Ms. Gilleece's duties primarily concerned setting policy and rarely involved specific matters related to the interests of an individual firm. He, therefore, advised Ms. Gilleece that there should be no legal problem with either forming a consulting firm or contacting DoD contractors to determine their interest in such services. However, Mr. Ream testified that to the best of his recollection, he told Ms. Gilleece that, prior to contacting a firm, she should file a written notice with her immediate supervisor and subordinates advising them that she was disqualified from any specific matter related to the individual firm. Further, he provided her with a sample memorandum for that purpose.

Mr. Ream also testified he told Ms. Gilleece and Captain Mayer to be aware that anything they might do could be reported in the press and draw criticism from people who resent senior DoD officials going to work for contractors. He advised them that even if something they planned to do was within the legal guidelines of acceptability, they should not do it unless they were prepared to defend press accounts of their activities.

Ms. Gilleece and Captain Mayer have a somewhat different recollection of the advice they received from Mr. Ream. They testified that they understood that if Ms. Gilleece only planned preliminary contacts with contractors to determine if there was any interest in the type of services she contemplated offering, she need not necessarily disqualify herself from participating in matters involving the firms. It was their understanding that Mr. Ream had said a disqualification would be required only if Ms. Gilleece had a monetary commitment or an offer from a firm.

Ms. Gilleece did, however, acknowledge that Mr. Ream had indicated that even though the contacts would be preliminary in nature, it would be a good idea to recuse herself to preclude the perception of a conflict. She also testified that based on this advice, she decided she should not, in fact, participate in any specific matters involving the firms she contacted. However, her testimony also indicates that based on her perception of Mr. Ream's advice, Ms. Gilleece did not believe it was critical to document her decision with a written notice of her disqualification until she had proceeded to some point beyond preliminary contact with a firm.

Between May 21, 1985, and June 25, 1985, Ms. Gilleece wrote to individuals whom she stated she knew at 20 major DoD contractors and 2 law firms concerning her planned consulting venture (Enclosure 1) Each of the letters forwarded a package containing Ms. Gilleece's and Captain Mayer's biographical data, a prospectus on the proposed firm, and a document entitled "Agreement," which appeared to be a proposed contract. In addition to the 20 contractors to which Ms. Gilleece wrote letters, she also provided this package of material to another 5 firms without a covering letter.

While Ms. Gilleece was sending these letters, Mr. Chapman Cox, the General Counsel, DoD, became aware of concerns that were being raised regarding her efforts. He called Dr. James Wade, Ms. Gilleece's supervisor, on about June 5, 1985, and asked Dr. Wade to look into the matter. When Dr. Wade questioned Ms. Gilleece, she described to him her understanding of Mr. Ream's advice. Based on this description, Dr. Wade believed Ms. Gilleece was in technical compliance with the applicable laws and regulations concerning her actions. He was, however, concerned that her activities would, in all likelihood, become public knowledge and were potentially very embarrassing both to her and the DoD. He, therefore, directed that Ms. Gilleece submit the written disqualification notices Mr. Ream had previously suggested.

Ms. Gilleece signed a disqualification notice on June 14, 1985, stating she would recuse herself from any matter that would have a "direct or predictable impact" on any of the 14 companies to which she had written between May 21, 1985, and June 14, 1985. She signed a similar notice on June 18, 1985, covering five firms to which she had written between June 15 and June 17, and the five firms which were contacted without letters (including four firms contacted prior to June 14, 1985, but omitted from the memorandum of that date). This memorandum also included a disqualification from matters involving four firms that had informally contacted Ms. Gilleece concerning her future employment plans. In a memorandum dated June 28, 1985, Ms. Gilleece disqualified herself from matters involving one additional firm which she had contacted on June 25, 1985. This memorandum also stated Ms. Gilleece was reinstating herself in matters pertaining to two firms that had told her they had no interest in retaining her planned firm. There was no evidence that Ms. Gilleece notified either Dr. Wade or her subordinates of her contacts with the two law firms.

On June 25, 1985, The Wall Street Journal ran a feature article on Ms. Gilleece's activities. This article did not specifically refer to her attempts to establish a consulting firm. Dr. Wade discussed the situation again with Ms. Gilleece on June 25, 1985. Ms. Gilleece testified that during this discussion Dr. Wade told her he wanted to remove her from her position and make her a Special Assistant. Ms. Gilleece resisted this idea because she felt it would give the appearance that she had acted improperly. Ms. Gilleece also told Dr. Wade she would

terminate her efforts to establish a consulting firm. Ms. Gilleece stated that she told Dr. Wade she would do this by telephoning each of the people she had contacted concerning her plans.

On June 26 or June 27, 1985, Ms. Gilleece met with Mr. Cox, Dr. Wade, and Mr. Ream concerning her activities. These individuals have differing recollections of the agreement reached during the meeting. Ms. Gilleece testified that during this meeting she reiterated her intention to terminate all attempts to establish a consulting firm. Mr. Cox understood that it was agreed during this meeting that by the following Monday, Ms. Gilleece would send letters to each of the firms she had contacted notifying them of the termination of her efforts. Ms. Gilleece testified that during this meeting she resisted the idea of sending letters to each firm, and that the issue was never resolved.

Ms. Gilleece subsequently discussed the need to send letters with an attorney in the Office of the Judge Advocate General of the Army, whom Mr. Cox had arranged to serve as her counsel. Ms. Gilleece stated that this attorney told her he saw no difference between letters and telephone calls, but would talk to Mr. Ream. Ms. Gilleece stated she received no further response to this question, and proceeded to telephone the firms. On July 24, 1985, Ms. Gilleece wrote a memorandum to Dr. Wade advising him she had notified all the firms she had previously contacted that she no longer contemplated establishing a consulting firm.

III. FINDINGS

A. Communications with Contractors. Ms. Gilleece testified that she did not intend to solicit business when she wrote to the contractors concerning her planned consulting business. She stated she was asking only for an appraisal of the viability of her concept for such a firm. However, we found that the content of a number of Ms. Gilleece's letters and the material she enclosed, especially the "Agreement," gave the appearance that she was soliciting business. Moreover, about half of the recipients of this material who were interviewed also believed Ms. Gilleece was soliciting business from their firms.

The majority of Ms. Gilleece's letters were very brief, virtually identical, follow-ups to telephone calls she had made on the same date as the letters (Enclosure 2). These letters said; "Enclosed is information on the proposed consulting firm about which I spoke to you. Please call me (office phone number is 695-7145) as soon as you've had an opportunity to read it. My associate, Mike Mayer, and I are available to talk to you about the benefits for...(company name)." Based on the limited content of these letters alone, it is difficult for us to determine her intent.

Ms. Gilleece, however, also sent several longer letters to individuals whom she had been unable to contact by telephone (Enclosure 3). In these letters, Ms. Gilleece included some rationale for her intention to establish a consulting firm and a brief paragraph on the type of services she contemplated offering. In these letters, Ms. Gilleece also stated "I believe there is a substantial benefit for (name of company) in obtaining experienced representation in acquisition matters..." and requested an opportunity to discuss her plans with the recipient. While this language is not a clear solicitation for business, we believe it creates a strong appearance of a desire to establish a business relationship and goes beyond seeking comments on the viability of her concept for a consulting firm.

In two instances Ms. Gilleece wrote letters tailored to specific companies (Enclosure 4). While one of these letters clearly asks for suggestions on the material enclosed, it also states that Ms. Gilleece is fully committed to a consulting business and suggests that the first firm to become a client would be entitled to some special benefit. In the other letter, Ms. Gilleece also seeks advice. However, the advice sought concerns potential marketing strategies rather than the viability of the concept for her planned firm. Despite Ms. Gilleece's testimony concerning her intent to obtain an assessment of the viability of her concept and approach to establishing a new company, we believe that these letters also gave the appearance of an attempt to solicit business.

Ms. Gilleece testified that the document entitled "Agreement" (Enclosure 5), which she enclosed in her letters, was intended solely as a model to convey her concept of the type of contractual agreement she contemplated establishing (e.g., the fee she was seeking). She further stated she had been advised by individuals in the consulting business that she should consider sending potential clients such a model contract for this purpose. However, she also stated these individuals told her that any firm interested in retaining her firm would want to use its own contract forms. Ms. Gilleece testified that while she developed this "Agreement" as a marketing device, she never thought it would ever actually be used.

We found that the terms and conditions contained in the "Agreement" Ms. Gilleece enclosed with her letters gives the impression that Ms. Gilleece was seeking their business. For example, the agreement stated that unless Ms. Gilleece was hired by at least 12 firms by August 1, 1985, she retained the right to render the agreement void. We believe that the urgency in securing clients implied in this language was inconsistent with Ms. Gilleece's stated intent of making preliminary inquiries on the viability of her concept for a consulting firm.

We contacted 13 of the individuals to whom Ms. Gilleece wrote concerning her proposed consulting firm. We found that six of these individuals clearly considered Ms. Gilleece's

correspondence a solicitation for business from their firms, while only five understood that she was only seeking suggestions on her concept. The remaining two individuals stated they had not formed an opinion on Ms. Gilleece's intent in writing them. Based on these responses and our own review of the material, we believe that Ms. Gilleece did, in fact, create the appearance that she was soliciting business.

B. Subsequent Official Duties. We found no evidence that while Ms. Gilleece was actively pursuing her plan to establish a consulting firm, she had any involvement in specific matters related to the contractors she contacted concerning this effort. We did, however, find that Ms. Gilleece's participation in a July 10, 1985, meeting of the Defense Systems Acquisition Review Council (DSARC) could lead to the possibility that there was a conflict of interest.

On July 5, 1985, we reviewed Ms. Gilleece's correspondence files and calendar for the months of May and June. We found no correspondence during this period related to any specific matter involving any of the firms Ms. Gilleece had contacted concerning her proposed consulting firm. There was also no obvious evidence in Ms. Gilleece's calendar that she had participated in any such matters. Although several entries in the calendar could not be initially ruled out, further research found either that Ms. Gilleece did not participate in the meeting or that the meeting did not concern any matter in which these firms would have a special interest.

We also took sworn testimony from Ms. Gilleece and several individuals who would be in a position to know if she had been involved in any matters that could represent a conflict of interest as a result of her employment contacts with a firm. In this testimony, Ms. Gilleece stated that subsequent to writing to a firm she had no involvement in any matters involving these firms. With one exception, Ms. Gilleece's testimony was verified by the others we interviewed concerning this point.

The exception cited concerned a possible conflict of interest involving firms Ms. Gilleece had contacted, which resulted from her participation in a July 10, 1985, DSARC meeting. We found that Ms. Gilleece did attend this meeting, but that the meeting involved a review of new program starts to determine if they should be placed under the cognizance of the DSARC at an early stage in their development. We do not believe that her participation in this meeting was, in fact, contrary to her testimony. However, since this meeting did involve programs that would appear to be of interest to firms Ms. Gilleece had approached concerning her planned firm, we believe her participation in this meeting could be perceived as a conflict of interest.

Ms. Gilleece's position as the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management) has the broad responsibility for establishing DoD policy on acquisition matters. Her responsibilities include providing guidance and direction to the Defense Acquisition Regulatory Council (DARC). The DARC is comprised of representatives from the Military Departments and the Defense Logistics Agency, which formulates changes to the Federal Acquisition Regulation (FAR), and the DoD FAR Supplement. She also reviews, evaluates and approves policy changes emanating from this group. She, therefore, was in a position to substantially influence policies which could have significant influence on the interests of many, if not all, of the firms she had contacted regarding this effort.

We interviewed the acting chairman of the DARC and reviewed DARC records. We found that during the period she was attempting to establish a consulting firm, Ms. Gilleece did provide guidance on two significant issues that would be of interest to any DoD contractor. In one instance, she provided the DARC a draft revision to FAR coverage related to making contractors, rather than the Government, responsible for demonstrating cost reasonableness. In the other case, she provided a draft revision to FAR coverage that would mandate audit support in field pricing support cases. Therefore, although we found no specific matters related to individual contractors concerning her proposed firm, she was involved with policy matters of interest to many of these firms during this period.

C. Statutory Violations. Section 208 of Title 18, United States Code, establishes criminal penalties for certain conflicts of interest by Government personnel. The Statute provides:

"...whoever, being an officer or employee of the executive branch of the United States Government...participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he...or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest--

"Shall be fined not more than $10,000, or imprisoned not more than two years, or both."

We found no evidence that Ms. Gilleece was involved in any matter that we would consider to be a "particular matter" involving any of the firms she contacted regarding her proposed consulting firm. Further, although we found that Ms. Gilleece's contacts with these firms were at least solicitations of future

business and conceivably an attempt to open negotiations, we had no evidence of any discussion or expression of interest which we would construe as the beginning of negotiations. We are, however, forwarding a copy of this report to the Public Integrity Section of the Department of Justice, as the office responsible for enforcement of the statute.

D. Regulatory Violations. The departmental regulation applicable to conflicts of interest involving DoD employees is DoD Directive 5500.7, "Standards of Conduct." This regulation differs substantially from 18 U.S.C. 208, which focuses on official duties in which an employee may not engage as a result of negotiating with a private firm concerning future employment. The DoD Directive, in addition, focuses on the types of activities in which an individual may not engage because of the responsibilities and duties of their DoD positions.

The following is an excerpt from a portion of DoD Directive 5500.7:

"VII. CONFLICTS OF INTEREST

"A. Affiliations and Financial Interests.

DoD personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict between their private interests and the public interests...related to the duties or responsibilities of their DoD positions....

"D. Disqualification or Divestiture Requirements. Unless otherwise expressly authorized by action taken under 18 U.S.C. 207 or 208 (reference (f)), all DoD personnel who have affiliations or financial interests which create conflicts or appearances of conflicts of interests with their official duties must disqualify themselves from any official activities that related to those affiliations or interests or the entities involved. A formal disqualification must be sent to an individual's superior and immediate subordinates whenever it appears possible that his official functions will affect those affiliations, interests, or entities. If the individual cannot adequately perform his official duties after such disqualification, he must divest himself of such involvement or be removed from that position."

We believe that when Ms. Gilleece began to pursue the establishment of a consulting firm, which she declared would only be viable if a substantial number of DoD contractors became clients, she violated Section VII A by engaging in a business activity that placed her private interests in conflict with the duties and responsibilities of her DoD position. We also find that under Section VII D, Ms. Gilleece had a duty to formally disqualify herself from "any official activities" which could

57-528 O - 86 - 3

create a conflict of interest or the appearance of a conflict of interest with her private interests. Further, we believe Ms. Gilleece created a conflict between her official duties and the interests of a substantial number of major DoD contractors. Therefore, she was required to disqualify herself from the policy and rule making responsibilities of her office in order to avoid creating the appearance of a conflict between these affiliations and her official activities.

The advice Ms. Gilleece received from Mr. Ream concerns us. Mr. Ream's advice was primarily focused on the legal duties Ms. Gilleece would have under 18 U.S.C. 208 to disqualify herself from certain future activities governed by this statute. He apparently did not advise her of the implications that her activities, as she described them to him, would have under Section VII A of the regulation because of the sensitive nature of her position or the broader disqualification requirements set forth in Section VII D. We believe that he should have realized the sensitive nature of her position within the Department and more strongly emphasized the need to absolutely and totally avoid conflicts between her official duties and private interests.

Still, the responsibility to present fully the facts rested with Ms. Gilleece, herself an attorney. In the absence of her full disclosure to Mr. Ream of the content of her letters, the "Agreement" and the extent of their dissemination to industry, we do not believe her culpability is significantly reduced by good faith reliance on the advice of counsel.

In passing, we note several additional violations of the Directive. The first concerns the use of Government property in Ms. Gilleece's personal activities. This violation occurred when Ms. Gilleece's secretary, who also planned to join the proposed consulting firm, prepared a number of Ms. Gilleece's letters and the accompanying resumes, the prospectus, and the Agreement on a Government word processor.

The actions of Captain Mayer should also be reviewed for similar violations of the Standards of Conduct directive. We believe that his supervisors, other than Ms. Gilleece, should address his conduct in this matter and take appropriate action.

IV. CONCLUSIONS: Based on our findings in this matter, we have concluded that:

o The actions taken by Ms. Gilleece, and the ensuing publicity, have so compromised her ability to perform her rule making and policy setting role that she can no longer effectively serve the Department in such a position.

o We believe that the lack of clarity in the DoD Standards of Conduct regulation and in the advice Ms. Gilleece received concerning her regulatory responsibilities indicates that a more

structured approach needs to be used when advising senior officials. The miscommunication which occurred between Ms. Gilleece and Mr. Ream may not have occurred if a concise written summary of their meeting had been prepared.

o Although Ms. Gilleece testified that her letters were not intended to be solicitations for business, they gave the appearance that they were, and were perceived as such by many of the recipients.

o There is no evidence that subsequent to contacting contractors concerning her future employment plans, Ms. Gilleece participated in any matter that would constitute a violation of 18 U.S.C. 208, the statute applicable to conflicts of interest by Government employees.

o Ms. Gilleece violated the DoD regulation on "Standards of Conduct," and, as a result, created a lack of public confidence in her official actions.

V. RECOMMENDATIONS. We recommend that:

o Ms. Gilleece be removed from acquisition-related responsibilities.

o The Office of General Counsel prepare a formal outline for advising senior officials on Standards of Conduct and, in the future, furnish them with a written summary of its advice as soon as practicable after responding to their specific inquiries.

o The "Standards of Conduct" regulation be revised to more clearly state the responsibilities of DoD employees and supervisors with regard to recusals from actual or potential conflicts of interest and "affiliations."

Allied Bendix Aerospace

AVCO

Boeing Company

Dynalectron

Emerson Electric Company

FMC Corporation

Ford Aerospace

General Electric Company

Gould, Incorporated

• Grumman Aerospace

Hazeltine Corporation

Honeywell

• Hughes Aircraft

• Litton Industries

Magnavox Electronic Systems

McDonnell Douglas Corporation

3M Company

• Motorola, Incorporated

NI Industries

Northern Telecon

Raytheon Company

Rockwell International Company

Singer Company

Sperry Corporation

• Firm which contacted Ms. Gilleece

Enclosure 1

Teledyne

Texas Instruments

TRW

United Technologies Corporation

Westinghouse Electric Company

Latham, Watkins & Hills

Fried, Frank, Harris & Shriver

1713 Maple Hill Place
Alexandria, VA 22302
June 6, 1985

FMC Corporation
1627 K Street, N.W.
Suite 500
Washington, D.C. 20006

Dear

Enclosed is information on the proposed consulting firm about which I spoke to you. Please call me (office phone number is 695-7145) as soon as you've had an opportunity to read it. My associate, Mike Mayer, and I are available to talk to you about the benefits for FMC.

Sincerely,

MARY ANN GILLEECE

Enclosure

Enclosure 2

1713 Maple Hill Place
Alexandria, VA 22302
June 15, 1985

FMC Corporation
1627 K ST., NW, Suite 500
Washington, DC 20006

Dear

Following up on my previous letter, I would like to suggest that any phone calls be directed to my answering service at (703) 751-4677. I will return your call as quickly as possible.

Sincerely,

MARY ANN GILLECE

1713 Maple Hill Place
Alexandria, VA 22302
June 11, 1985

Technology Group
Westinghouse Electric Corporation
Corporate Headquarters
Gateway Center
Pittsburgh, PA 15222

Dear Mr

Current national attention to procurement matters has resulted in a high level of congressional activity and promises to further complicate the already difficult process of doing business with the Government. This situation, coupled with my own desire to focus my efforts in the private sector, has led me to form a consulting organization specializing in procurement issues.

My intention is to provide an issue-oriented flow of timely information and evaluation to a limited number of clients including personal briefings of top executives. The positions and needs of these executives will then be personally represented to key officials in the executive and legislative branches. Additional details are provided in the enclosures.

I believe there is a substantial benefit for Westinghouse in obtaining experienced representation in acquisition matters to complement the company's own efforts on behalf of its programs.

My associate, C. M. Mayer, and I would appreciate an opportunity to discuss this with you or a member of your staff. Please call me after you have had time to examine the enclosures (my office number is (202) 695-7145).

Sincerely,

MARY ANN GILLEECE

Enclosures

Enclosure 1

1713 Maple Hill Place
Alexandria, VA 22302
June 17, 1985

Energy and Advanced Technology Group
Westinghouse Electric Corp.
Corporate Headquarters
Gateway Center
Pittsburgh, PA 15222

Dear Mr.

Following up on my previous letter, I would like to suggest that any phone calls be directed to my answering service at (703) 751-4677. I will return your call as quickly as possible.

Sincerely,

MARY ANN GILLEECE

May 21, 1985

Magnavox Electronic Systems Co.
1313 Production Road
Ft. Wayne, IN 46808

Dear —

Following our conversation I have prepared a description of the consulting service I intend to provide. I have enclosed this, as well as biographical information for myself and Mike Mayer. Taken together, these comprise our "marketing package" and I would certainly appreciate your comments. In fact, I plan to do nothing further with the material until I have your suggestions incorporated.

On the other hand, you should know that I am now fully committed to a consulting business. If you believe we are essentially ready to go, I would welcome Magnavox as our first client. We are ready to discuss a contract for services to begin September 1, 1985. We anticipate annual contracts at $30,000 for a limited number of clients (no more than 15).

The first client should be entitled to some special benefits, but I haven't yet decided what these should be.

I hope you will call as soon as you get a chance (202-695-7145).

Sincerely,

MARY ANN GILLECE

Enclosure

1713 Maple Hill Place
Alexandria, VA 22302
June 15, 1985

Mr. .

Magnavox Electronic Systems Co.
1313 Production Road
Ft. Wayne, IN 46808

Dear

Following up on my previous letter, I would like to suggest that any phone calls be directed to my answering service at (703)751-4677. I will return your call as quickly as possible.

Sincerely,

MARY ANN GILLEDGE

AGREEMENT

This Agreement is made as of _____ by and between _____ (called the Corporation) and Procurement Strategy Corportion, a corporation the sole shareholders of which are Mary Ann Gilleece and Carl Michael Mayer (called PSC) and the address of which is Suite , Pennsylvania Ave., N.W., Washington, D.C.

The Corporation desires, along with other similarly situated companies, to utilize the services of PSC in obtaining information about and affecting certain changes in statutes or regulations and policies which would be beneficial to the Corporation in the conduct of its business.

PSC is willing and able to perform such services in furtherance of the objectives stated above under the terms and conditions of this Agreement.

THEREFORE, in consideration of the foregoing and the mutual agreements and covenants described below, the parties agree as follows:

ARTICLE I - Period of Service

A. The period of service under this Agreement shall be from September 1, 1985 to August 31, 1987 and may be renewed upon the agreement of the parties hereto.

B. Should PSC either be unable or unwilling to perform the services contemplated by this Agreement, then the Corporation has the right to terminate upon thirty days prior written notice, provided however that the Corporation may, if PSC is unable or unwilling to so perform, elect to continue or seek modification of this Agreement without in any manner waiving or relinquishing its termination rights.

C. Should PSC fail to complete similar Agreements with at least 11 other clients prior to August 1, 1985, this Agreement may be declared void by and without penalty to PSC.

ARTICLE II - Fees

A. The Corporation will pay PSC the sum of $30,000 on September 1, 1985 and September 1, 1986.

B. All expenses incurred by PSC in performing services for the Corporation will be reimbursed by the Corporation. For purposes of this Agreement, all expenses means costs of travel, secondary consulting arrangements agreed to in advance by the Corporation, material costs in excess of normal administrative costs, and overseas telephone costs attributable to efforts in behalf of and only in behalf of the Corporation. To the extent such costs are attributable to efforts in behalf of more than one client, PSC will equitably distribute such costs among or between the clients. In the case of travel, PSC will not be entitled to reimbursement for costs beyond or in excess of those allowed the Corporation's own executives.

ARTICLE III - Extent and Character of Services

A. The relationship of PSC to the Corporation is that of an independent contractor and nothing in this Agreement shall be construed as creating any other relationship.

B. PSC contemplates entering into agreements identical to this Agreement with a minimum of 14 other similarly situated corporations.

C. PSC contemplates determining from senior officials of the Corporation and from time-to-time what they view as the most serious problems requiring action to affect statutory and regulatory change.

D. PSC will undertake efforts to represent the concerns of the Corporation to appropriate officials of the Executive and Legislative branches of Government.

E. PSC will provide current information on its efforts in behalf of the Contractor and other timely information on matters affecting the Contractor's business. This information will be provided through semi-annual visits to the Contractor's offices, through monthly confidential analysis of events, and by telephone as the need dictates.

F. PSC will render assistance in the resolution of emergent issues relating to procurement by seeking information from responsible sources and analyzing such information for the benefit of the client.

G. PSC will prepare and deliver testimony on general procurement issues in behalf of the Corporation to the extent desired. However, PSC will not undertake representation for any corporation referred to in Article III. B. or any other person or entity, before any Legislative or Executive body of the U.S. Government unless agreed to in writing by the Corporation. PSC may, however, testify on its own behalf when it clearly establishes that the views expressed are its own.

H. PSC will serve as the Corporation's coordinator in procurement matters. Visits with procurement officials will be arranged by PSC and PSC will accompany the Corporation's executives to such meetings. PSC representatives will also accompany and advise officials of the Corporation in visits to legislative offices and discussions with elected representatives. PSC will recommend and schedule such visits with the concurrence of the Corporation.

I. PSC assumes all risks of an independent contractor and agrees to obtain all the insurance necessary for PSC's protection in connection with work under this Agreement.

J. PSC agrees to comply with all laws and regulations applicable to its performance under this Agreement and indemnifies and holds the Corporation blameless for and failure of PSC to so comply.

ARTICLE IV - Conflict of Interest

A. PSC recognizes that the Corporation is a contractor to the U.S. Government. PSC shall refrain from activities on behalf of the Corporation which could be interpreted as creating a conflict of interest for PSC.

B. PSC warrants and represents that to the best of PSC's knowledge there exists no direct or indirect private interest of PSC (including corporate stockholdings or other business agreement or obligation) which is or may appear to be incompatible with PSC's service under this Agreement.

In witness whereof, the parties have executed this Agreement.

By: _____ Date: _____

Procurement Strategy Corporation

By: _____ Date: _____

Procurement Strategy Corporation (PSC) assists clients to compete for government business with confidence and success. PSC provides a thorough understanding of the internal forces motivating government customers, particularly the Department of Defense, and helps its clients accentuate their strengths in doing business with those customers. To enable corporate executives to respond quickly to changes in federal procurement and emerging market opportunities, PSC provides periodic updates on procurement activities and timely information on imminent policy changes being considered by the Federal Government. Analysis and counsel is always tailored to the needs of the client.

Understanding the forces which motivate government policy makers insures that PSC's clients anticipate critical factors and develop strategies that enable them to influence long-term trends affecting their future business success. PSC interprets procurement regulations to determine their susceptibility to change and business impact. To assist in contract pricing and financing, PSC analyzes profit policy, certification requirements and audit trends. PSC helps clients keep pace with acquisition initiatives, such as dual sourcing, competition, and multi-year contracting; and tracks a broad range of management issues from quality and productivity incentives to industrial base enhancement.

Drawing on comprehensive experience and knowledge in procurement policy, both in the executive and the legislative branches, PSC can help its clients develop successful business strategies and mobilize assistance from numerous sectors to implement those strategies. PSC constantly maintains communications with key

parties throughout industry and government, including frequent visits to concerned officials in Congress, and is always ready to advise on the latest thinking in regulation development and enforcement. It can provide insights and assistance to build good working relationships with essential personnel, such as contract negotiators, auditors, quality assurance inspectors, and program managers. And PSC can help clients establish teaming and other cooperative arrangements to take advantage of new opportunities in international acquisition ventures.

PSC provides quick reaction to client needs and will tailor a program to assist the client to conduct government business more effectively. PSC serves clients on retainer, however, travel expenses are borne by the client as are other extraordinary costs such as secondary consulting arrangements. Twice each year PSC will conduct day-long briefings for corporate executives on recent events and current trends in procurement. These briefings, in the client's offices, will be augmented by a monthly confidential analysis addressing clients' interests and concerns. In addition, PSC will schedule meetings with key officials to enable clients to benefit from opportunities to influence trends in government business. Additional services will be provided as needed on an individual basis.

Mr. SIKORSKI. I thank you. Since the record will be replete of the chronology of the facts of this case, I would like to hit some of the highlights.

She was hired in the spring of 1983 to be the Deputy Under Secretary for Acquisition Management. In January 1985, pursuant to reorganization, she understood that her job would be eliminated. As I understand your report, she then looked at employment within the agency some place else, also looked at private sector employment, and then initiated this idea of a consulting agency.

Good so far?

Mr. VANDER SCHAAF. Yes, I believe so.

Mr. SIKORSKI. The Secretary announces his "get-tough" policy with regards to certification. Three and a half weeks later on April 5, she countermanded him, weakening it in two respects. Three and a half weeks later, she——

Mr. VANDER SCHAAF. Let me interrupt. I am not sure she countermanded him. She did, in a sense, water down the effect of the directive, but there may have been some very valid legal reasons for having to water it down that the current directive might have needed, or we could not have done business under. But the general counsel from the Department said——

Mr. SIKORSKI. He said that people who bill Government are going to have to tell the truth when they certify that what their applying for was allowable. Something that 96 million taxpayers do. That was put into effect by the counsel—that was implemented by the Department on the 19th of March, as I understand it.

Then she comes along on the 5th of April, and changes it in two respects. One is she says that it only applies to new billing procedures. All the old system carries forward, and that is the valid legal reason.

Mr. VANDER SCHAAF. Right.

Mr. SIKORSKI. She also said it doesn't apply to anything but the final signoff after the annual audit which sometimes takes years, and the Department's auditors decide what they can pay. Are you referring to valid legal reasons with regards to that issue?

Mr. VANDER SCHAAF. Not particularly. I think those are more administrative reasons. My office has recommended a number of times, that DCAA speed up this audit process, we can't wait to negotiate final overhead determinations 4 or 5 years after the overhead costs were incurred.

Mr. SIKORSKI. She had some informal discussions, or at least telephone conversations, and other things with regards to this consulting agency with defense contractors. She also met with the ethics officer at the end of April, April 30. She started her solicitations by letter of May 21, at least that is the earliest we have been able to see, which was Magnavox.

She sent out a total of 29 letters and/or packets to contractors, she had contacts with some of them, and evidently the packet went to 2 law firms as well. She didn't recuse or disqualify herself from any matters until June 14, almost 4 weeks after her first letter, and longer than that, after her first contact with defense contractors. She then signed disqualifications over the period to disqualify her from all those she had contact with, with the exception of the two law firms, as I understand it.

Then, finally, she was made a special assistant, in the same general area working for Dr. Wade, then she resigned after your investigation. During the pendancy of her outreach to the defense contractors, she took formal action in regard to at least two matters that affect defense contactors. One was the field work——

Mr. VANDER SCHAAF. Field audit, when we demand a field audit.

Mr. SIKORSKI. And the other is the issue that was a concern to Senator Grassley. Specifically, that was the work measurement issue.

Your report concluded that she violated DOD standards of conduct, and I quote, "by engaging in a business activity that placed her private interests in conflict with her duties and responsibilities of her DOD position." That's right, isn't it?

Mr. VANDER SCHAAF. That's correct, sir.

Mr. SIKORSKI. Second, you further stated, and I quote, "We believe that Ms. Gilleece created a conflict between her official duties and the interests of a substantial number of major DOD contractors. Therefore, she was required to disqualify herself from the policy and rulemaking responsibilities of her office in order to avoid creating an appearance of a conflict between those affiliations and those official activities." Is that correct?

Mr. VANDER SCHAAF. That is correct.

Mr. SIKORSKI. So what you are saying is that disqualification with regard to the companies was necessary. It is important for people to understand, you have titie 18, United States Code, sections 201 through 209, which raise the problem to a criminal violation. You also have internal standards of conduct within the DOD and other agencies pursuant executive orders and other underpinnings, and then you have sitting out there the Ethics in Government Act which deals with disclosure of financial interests.

Is that a pretty good——

Mr. VANDER SCHAAF. That is a pretty good summary of what is available; yes.

Mr. SIKORSKI. So what you said in your report is that disqualification with regard to the company she contacted was not the proper approach since the matters she normally deals with could affect all contractors. Is that correct?

Mr. VANDER SCHAAF. I'm not sure I understood that. Are you saying that we said that she shouldn't have disqualified herself?

Mr. SIKORSKI. No, saying that disqualification alone didn't remove the problem.

Mr. VANDER SCHAAF. No, I don't think it did remove the problem in this case because of the nature of the contractors and——

Mr. SIKORSKI. Her policymaking and the appearance, at a minimum.

Mr. VANDER SCHAAF. The appearance of her broad policymaking and rulemaking role that she played.

Mr. SIKORSKI. Again, you indicate in your report that Ms. Gilleece's routine duties involve matters of direct interest to all defense contractors. Aren't certification requirements, work measurement standards, field auditing issues, all significant financial interests to the defense contractors?

Mr. VANDER SCHAAF. Yes; they are financial interests to them.

Mr. SIKORSKI. In fact she even said in opposition to the work measurement that this would cost the contractors millions of dollars, I believe.

Mr. VANDER SCHAAF. I can't verify that. I don't know.

Mr. SIKORSKI. Well, as I mentioned earlier, on April 5 she sent a letter to all contractors weakening the certification requirements less than a month before she told DOD's ethics officer that she intended to start a consulting firm for those same defense contractors. That has to concern you, at least on the appearance standard.

Mr. VANDER SCHAAF. Yes; the appearance of the entire case, obviously, concerns us, Mr. Chairman. There is no doubt about that, and that's why we are recommending some changes in the existing law. And, you know, you have heard this morning that even the Bennett-Boxer legislation wouldn't deal with this kind of problem.

Mr. SIKORSKI. Before she disqualified herself on June 7, she wrote a memo opposing the Grassley work requirement proposal stating that it would cost millions of dollars. Then on June 14, on the day she first disqualified herself from some involvement with some of the contractors because of, as she admitted, "financial interests," she wrote another memo, this time on reasonableness of defense contractors' cost.

Isn't that an issue that the contractors are concerned with again?

Mr. VANDER SCHAAF. Certainly, yes, they are.

Mr. SIKORSKI. So we get back to the point her disqualification really didn't amount to much because she was conducting business at the same time as usual.

Mr. VANDER SCHAAF. She made some disqualifications and was a little tardy in making them. The final disqualification that we have on paper and record, I believe, didn't occur until the 24th of July.

Mr. SIKORSKI. That was when she terminated everything.

Mr. VANDER SCHAAF. Well, I believe she stated that she had terminated everything somewhat earlier than that, about middle or late June. Her final letter, which I believe we have in our record, is dated the 24th of July. Sometime, about the 18th of June, she had told Dr. Wade that she had completed disqualifying herself. We have a copy of memorandum that was dated the 24th of July in which she stated that she had notified all contractors that she was terminating her efforts to form a consulting firm.

Mr. SIKORSKI. I think in your report you say that on July 24 she informed her supervisor in writing for the first time that she had in fact terminated all activities with regards to this consulting company.

Mr. VANDER SCHAAF. With respect to the establishment of a new firm, yes.

Mr. SIKORSKI. The point is, she had to do that because this disqualification procedure didn't remove the problems with regards to the overall policymaking. And that was because she wasn't on the other side of the table from any of these defense contractors. That wasn't her job.

Mr. VANDER SCHAAF. Yes; that's correct, sir.

Mr. SIKORSKI. The reason I ask for more than a nod is because we don't pick up a nod.

Further, after Ms. Gilleece met with Mr. Ream, Mr. Wade, and Mr. Cox, and after Mr. Cox requested an IG investigation, she participated in a meeting for the Defense Systems Acquisition Review Council, which you note in your report. That's the Council responsible for evaluating new weapons systems.

Now wouldn't defense contractors she contacted have more than a passing interest in that meeting as well?

Mr. VANDER SCHAAF. Yes; many defense contractors would have an interest in that meeting.

Mr. SIKORSKI. In fact, aren't there any number of matters that Ms. Gilleece may have been involved in that we don't know of, just by virtue of her job description——

Mr. VANDER SCHAAF. We couldn't get into her mind or activities or conversations she had with other people. We looked at a telephone log, to the extent that one was maintained. We looked at her files, the records and files of papers that were available and still are available. We went to both people working for her and to her bosses and looked for correspondence in their files, and what we came up with were these two instances: rulemaking and the attendance at the DSARC as the principal areas where there might be a conflict; at least there is the perception that a conflict could take place. But, again, we couldn't apply those situations because

of the "particular matter" problem in the law, the existing law, 18 U.S.C. 208.

Mr. SIKORSKI. In fact, at the same time she was fishing for consulting contractors with defense contractors, she was carrying on her duties, setting major policy—the review council that deals with weapon systems, the work measurement field audit, and the work on the certification.

Mr. VANDER SCHAAF. Well, in some cases, she set the policy, but in other cases she only carried out orders. Let me give you an example of what actually happened in the Department in one case.

Those two rules you are talking about, in fact, my office recommended changes in those two rules. There was a meeting of the Defense Council on Integrity and Management Improvement in early June. I believe the date was June 5. In that meeting I personally spoke to the council at length about some 25 or so procurement recommendations that the Office of Inspector General felt we ought to adopt, they were things that we could do within our own regulations and procedures. And those were two that she was told to take action on and get implemented. I think she was, in fact, carrying out Secretary Taft's order, through the DCIMI.

Mr. SIKORSKI. I understand all that, but those all affected the——

Mr. VANDER SCHAAF. Oh, they absolutely affect the contractors. They do play a role, and I think it is also immaterial, as is sometimes argued, whether they are detrimental to contractors, or they are in their benefit. In either case, you have an issue of degree there, Mr. Chairman. Is it detrimental? How detrimental is it? Is it very, very detrimental, or is it just a little bit detrimental. Is it beneficial? How beneficial? Could we make it more beneficial? So when you get a policy, a rulemaking official, involved in this business, you run into problems.

And as you pointed out, those disqualification forms really didn't help her situation. No, they didn't really do anything. They met the letter of the law in that sense, but it didn't help her in terms of carrying on her job, because she had now placed herself in a position where she had 29 contactors of which 26 of the 29 were major defense firms. Therefore, when you look at those major defense firms, they do a huge proportion of the total business—the total contract business the Department has.

Mr. SIKORSKI. Nine of them were under criminal investigation by you guys.

Mr. VANDER SCHAAF. Well, some aspects of their operators may be, yes, sir.

Mr. SIKORSKI. Well, beyond that she should have at least filed the disqualfication forms before she sent out the letters.

Mr. VANDER SCHAAF. Yes.

Mr. SIKORSKI. And before she mailed her proposed agreement, and before she had telephone conversations with some of these.

Mr. VANDER SCHAAF. She did seek some counsel from the ethics officer of the Department. He is here today, and I will let him speak for himself.

Mr. SIKORSKI. We are going to get into that, and you address that in your report. You concluded that she violated the standards of conduct. You did not find, however, a violation of 18 U.S.C. 208, the conflict of interest statute. Is that right?

Mr. VANDER SCHAAF. We did not find a legal violation. That is correct.

Mr. SIKORSKI. Why wasn't a violation committed?

Mr. VANDER SCHAAF. Because there are four criteria you have to meet, and we felt they didn't meet two of the criteria. Now there was some discussion with the Justice Department on whether she was involved in a particular matter that impacted one of those companies in which she had——

Mr. SIKORSKI. In fact, their response to you is that it may.

Mr. VANDER SCHAAF. It may, and that is why we left that interpretation to the proper office at the Justice Department, because we felt that they are the final arbitrator of that issue.

Now with respect to the other matter we had to show to have a violation of the statute, we had to show that she conducted negotiations with those contractors. And we could not show that. We have contacted 23 of the 29 people that received letters from her, and all of them agree that this was not negotiations. They did not make any offers, counteroffers, proposals, or anything else.

Mr. SIKORSKI. The majority of them said that they took it as a solicitation.

You are a lawyer, and you are familiar with Black's Law Dictionary definition, and you first learned in your contracts class that a contract is simply two things: an offer and an acceptance. And the period that is begun by an offer and ended with the acceptance is called negotiations.

Mr. VANDER SCHAAF. There is some question as to whether there is an offer. You know, Mr. Chairman, suppose somebody wants to come to work for you and sends you a resume. If you pay no attention to that resume, I could hardly accuse you or say to you you have started negotiations for hiring that person. However——

Mr. SIKORSKI. That isn't the case here. Come on.

Mr. VANDER SCHAAF. Some of those people have not, as far as we can determine——

Mr. SIKORSKI. I agree with your example, but that is not analogous to the situation at hand. Let's go back over the facts. She talked to the guy—let's just look at a specific case, Magnavox. You put the letter in your report.

Mr. VANDER SCHAAF. In some instances——

Mr. SIKORSKI. Wait a minute. She talked to them by telephone. She talked to them, had a conversation with regards to this consulting contract. She then, by May 21, 1985, letter to Magnavox, said she has prepared the description of her company, biographical information about her and the other principal who also happens to be her executive assistant at DOD. These comprise their marketing package and she said she would appreciate the comment on it. In fact they plan to do nothing further.

Then she goes on:

> On the other hand you should know that I am now fully committed to a consulting business. If you believe we are essentially ready to go, I would welcome Magnavox as our first client. We are ready to discuss a contract for services to begin September 1st, 1985. (In fact, she enclosed a form contract.) We anticipate annual contracts at $30,000 for a limited number of clients, no more than 15. And the first client should be entitled to some special benefit, but I haven't decided yet what these should be. I hope you will call as soon as you get a chance.

She leaves her official phone number at DOD there for them to return.

The agreement is somewhat lengthy. It is three pages, ending with an article on conflict of interest, coincidently enough, and then has a two-page, almost a two-page analysis, kind of a mission statement on her corporation. You have got not only the offer, but you have got details. You have got dollars. You have got dates. You have got when it is going to begin. That is not a résumé.

Mr. VANDER SCHAAF. There is an indication—and I can give you about four other examples to the ones that you gave that led us to believe that she was in fact seeking their business. And despite her testimony which said she was only asking for their comments with respect to the viability of creating such a business.

However, we have no evidence, Mr. Chairman, that the firms to which she sent this information ever came back in any positive nature and actually began any negotiations as most of us would understand that term. You could pick up the phone and say I am going to send you a letter, and if you are interested in what you read in that letter, give me a call. But nobody came back to her and started this process.

Mr. SIKORSKI. Wait a minute. That was not the case in this example. She talked with the gentleman at Magnavox specifically about doing this, and setting up this consulting contract and what else I am not privy to. Then she sent them this solicitation involving a packet, all the details, the numbers, a kind of enticer, special benefits; "we are ready to go, we welcome Magnavox as our first client."

That is a unilateral offer, at least, and perhaps more, depending on——

Mr. VANDER SCHAAF. But in order to have negotiations, I think you have got to bring the two parties in, and I don't believe the second party ever really came into this thing.

Mr. SIKORSKI. What definition are you using for that?

Mr. VANDER SCHAAF. I'm not sure if I need some help on this or not.

Mr. SIKORSKI. The point is, you have defined the issue away by your definition of negotiations. I would like to understand why your definition is appropriate, because it comes out of a law dealing with conflict of interest. I think any reasonable person in this country understands the conflict-of-interest law is to eliminate the private interests that interfere with the public interest.

I would suggest to you that at the point that she sent that solicitation—maybe even earlier—that there was a private interest that was beginning to impinge, if not indeed overwhelm the public interest she was to have served.

Mr. VANDER SCHAAF. And we so stated.

Mr. SIKORSKI. That's why she should have signed the disqualification form, and even that wasn't enough. She should have gotten out of the policymaking business.

Mr. VANDER SCHAAF. But we cannot conclude from sending those letters that these companies actually started negotiations with her.

Mr. GILMAN. Mr. Chairman, would the gentleman yield?

Mr. SIKORSKI. Yes.

Mr. GILMAN. In listening to your testimony, and reading your report of your investigation of August 16, I'm frank to say I am confused with the fine line you are drawing between the negotiating art of all of this—of all of the allegations and the actual violation of the conflict-of-interest proposal.

In your report, you state on a number of occasions that by engaging in a business activity that placed your private interest in conflict with the duties and responsibilities that you find that there has been a violation.

Mr. VANDER SCHAAF. Of our standards of conduct directive, yes, sir.

Mr. GILMAN. You go even to recommend that she be relieved from her duties because of the perception of the violation of standards of conduct.

Why are you drawing such a fine line as to whether or not these letters of solicitation and the agreement she sent out, and the discussion of the amounts of dollars were or were not a negotiation? Why did you rest on that proposal when you find that overall there is a distinct conflictive interest that is the basis for removal from office?

Mr. VANDER SCHAAF. Clearly there is, but to prosecute under the statute, under section 208, we would have to conclude that she conducted actual negotiations with those companies; that there were offers and counteroffers. There is no indication that that happened.

Mr. GILMAN. Mr. Vander Schaaf, you spell out in your investigation report, followups and telephone conversations and correspondence indicate that there was a further pursuit of the initial offer.

Mr. VANDER SCHAAF. Only one or two cases—and I have Colonel Keeney here who helped conduct this investigation. Colonel, can you give instances where we could show by her written material that there were telephone calls and letters combined which gives you the next step toward negotiations?

Mr. GILMAN. But Mr. Vander Schaaf, was the solicitation itself while she is employed in the Government and handled by a governmental secretary, is that a violation?

Mr. VANDER SCHAAF. Yes, it is. It is a violation of her standards of conduct, and we so state in the report.

Mr. GILMAN. Was the fact that she sent out agreements and had discussions on those agreements a violation of standards of conduct?

Mr. VANDER SCHAAF. Yes, when her private interests began to interfere with her public duties. And where that takes place, probably contacting two people, recusing one's self from any dealings with two or three people.

Mr. GILMAN. You indicate in your investigation that she continued to be involved in some policymaking decisions even while this solicitation was being undertaken; isn't that correct?

Mr. VANDER SCHAAF. There is some involvement there. Different people would place different importance on it. As I said earlier, in two of those cases, she did not decide the policy. Someone else decided it. She did write some letters to the DAR council telling them to implement the various policy that the Defense Council on Integrity and Management Improvement had adopted.

As far as the DSARC meeting was concerned, I think that is very important because it sets her up in a conflict of interest position, because the kind of information that was discussed at that meeting could be of interest to a defense contractor. In fact, if you look at the weapons systems that were discussed it would be. But there were no decisions made, that meeting was not decisional, no policy came out of the meeting as far as we could tell.

Mr. SIKORSKI. How do you know that? You have two issues. I think it is very clear that she violated standards of conduct.

Mr. VANDER SCHAAF. Absolutely.

Mr. GILMAN. It is unclear whether she violated 18 U.S.C. 208. That matter is over at the Justice Department. In fact, they came back saying we don't accept your analysis, a particular matter, and negotiations, which you hang your hat on.

Mr. VANDER SCHAAF. They did not come back on the negotiations issue. They did come back on the particular matter.

Now, I have learned yesterday——

Mr. SIKORSKI. Let me say that the term "negotiating" connotes discussions and active interest on both sides regarding the perspective employment, and it may be that the courts would give the statute this narrow interpretation in a criminal prosecution. It is at least arguable, however, that the prohibition in 18 U.S.C. 208(a) was intended to have a broader reach encompassing some situations from which the Federal employee or the perspective employer has made a unilateral expression of interest.

Mr. VANDER SHAFF. Now that is the Department of Justice's 1976 memorandum. Let me quote back to you a newer one, much newer than 1976. In their letter to us, Justice wrote, "Solicitations of business without more does not compromise negotiating within the meaning of subsection 208(a). See *CACI Inc.* v. *the United States*, 719 F.2d 1567.1577-1578 (Fed. Cir. 1983)."

Mr. SIKORSKI. And what were the facts of that situation?

Mr. VANDER SCHAAF. I'm not intimately familiar with that.

Mr. SIKORSKI. Well, let me help you.

Mr. VANDER SCHAAF. They came back to us and said——

Mr. SIKORSKI. Let me help you with it, and without objection we will put in at this point in the record the Congressional Research Service, Library of Congress, October 4, 1985, memorandum to us on the issue of negotiation. They specifically state in there that in that case the court was impressed by the fact that negotiations were not open at the time the employee was involved in the particular issue that would create the conflict.

In fact the unilateral discussion occurred before it had terminated. That's not the case here. The matter of negotiations was not fully resolved by that decision. Since then, the U.S. Court of Appeals in upholding the sufficiency of a DOJ endictment under the specific provision of section 208, ruled that negotiating language should be construed broadly to effectuate the legislative purpose. And as you know the legislative purpose involves a negotiation definition that is broader than the one that you have embraced.

[The information follows:]

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

October 4, 1985

TO : Honorable Gerry Sikorski, Chairman
House Committee on Post Office & Civil Service
Subcommittee on Investigations

FROM : American Law Division

SUBJECT : Official Acts Affecting a Private Employer With Whom a Federal Employee "Is Negotiating . . . Concerning Prospective Employment"

This memorandum responds to your request for information on the scope of the phrase "organization with whom he is negotiating . . . concerning prospective employment," as that phrase appears in the federal conflict of interest statute at 18 U.S.C. § 208. That provision of law bars a federal employee from taking official action on any particular governmental matter which affects the financial interest of the employee, the employee's spouse or dependents, or which affects the financial interests of an organization in which he is an officer, director or employee, or "with whom he is negotiating or has any arrangement concerning prospective employment." The specific questions concern whether the law would cover a situation where a federal employee unilaterally communicates a specific written proposal and draft contract for prospective employment or work to a private business, and then is in a position to take official action on a governmental matter which affects that business, prior to that time a response is received by the federal employee from that business organization.

Like other conflict of interest regulations, this provision of law is prophylactic in nature in that it "is directed not only at dishonor, but also at conduct which tempts dishonor." United States v. Mississippi Valley Generating Co., 364 U.S. 520, 549 (1961), concerning former 18 U.S.C. § 434, forerunner provision to current 18 U.S.C. § 208. In a study by the Bar Association of the City of New York, which provided for the model draft legislation upon which the current law was based, the dangers and risks in such situations were discussed:

> The risk is not bribery through the devise of job offers; the risk is that of sapping governmental policy, especially regulatory policy, through the nagging and persistent conflicting interests of the government official who has his eye cocked toward subsequent private employment. 1/

The "risks" and dangers to the public of "impairment of impartial judgement" 2/ embodied in the conflict of interest principle that a federal employee should not "act for the government where his private economic interests are involved," 3/ could thus arguably arise in a situation such as the one under consideration where a federal employee makes a specific unilateral offer or proposal for prospective employment to a private business over which the federal employee exercises some of-

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1/ The Association of the Bar of the City of New York, Special Committee on the Federal Conflict of Interest Law. Conflict of Interest and Federal Service, and Federal Service, Cambridge 1960, at 234.

2/ The Association of the Bar of the City of New York, Special Committee on Congressional Ethics. Congress and the Public Trust, New York 1970, at 39.

3/ Conflict of Interest and Federal Service, supra at 234.

ficial responsibility or decision making. As discussed in a court case concerning required disqualifications under other "revolving door" or "post employment" provisions, one of the goals of such ethics rules and the federal revolving door statute at 18 U.S.C. § 207, "is that the government employee not be influenced in the performance of public duties by the thought of later reaping a benefit from a private individual." Brown v. District of Columbia Board of Zoning, 413 A. 2d 1276, 1282 (D.C. App. 1980); note General Motors Corporation v. City of New York, 501 F. 2d 639 648-652 (2d Cir. 1974), as to appearances of improprieties in such situations.

Although concern over violations of the conflict of interest principle underlying the statute, as well as appearances of impropriety, may arise, it is not clear whether a unilateral offer or proposal by a federal employee to a prospective private employer is sufficient "negotiation" to come within the precise statutory prohibition of the criminal law in question. The statutes not define the term "negotiating", nor is the term defined in the House or Senate Report on the legislation embodying this provision.4/

The term "negotiating" or "negotiation", in the common meaning of the term, could apparently encompass both a unilateral offer or communication submitted for consideration, as well as bilateral discussions. The definition of "negotiation" in Black's Law Dictionary states: "Negotiation is process of

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4/ House Report No. 748, 87th Cong., 1st Session (1961); Senate Report No. 1213, 87th Cong., 2d Session (1962).

submission and consideration of offers until acceptable offer is made and accepted"[5/]; and the definition of "negotiate" states: "To communicate or confer with another so as to arrive through discussion at some kind of agreement or compromise about something."[6/] Thus, the unilateral or unsolicited "submission" or "communication" of an offer or a proposal for "consideration" may arguably be the logical beginning of the process of "negotiations" or "negotiating". The process could theoretically continue during the process of consideration until a refusal or negative reply is received, or until a reasonable amount of time has expired with no acceptance, refusal or counter offer by the other party. In the Standards of Conduct for Department of the Army Personnel, for example, the conflict of interest provision concerning negotiating for employment and disqualification states as follows:

> n. *Negotiating for employment.* DA personnel may not participate on behalf of the Government personally or substantially in any particular matter in which, to their knowledge, an organization with which they are negotiating for employment, or have any arrangement concerning future employment, has a financial interest. (18 USC 208.) "Negotiating" includes any action by DA personnel that reasonably could be construed as an indication of interest in future employment, including sending letters or resumes, making telephone inquiries, or failing to clearly reject unsolicited proposals from the entity's representative regarding future employment. It is not necessary that there be any firm offer of employment.

Army Regulation 600-50, 2-1(n), (November 20, 1984) Emphasis added.

5/ Black's Law Dictionary, 5th Ed., St. Paul 1979, at 934.

6/ Id.

As to current enforcement of the criminal law, however, it should be noted that a recent letter opinion from the Department of Justice, Conflicts of Interest Crimes Branch of the Public Integrity Section, found that: "Solicitation of business, without more, does not comprise "negotiating" within the meaning of subsection § 208(a)".[7/]

The case law relied upon by the Department of Justice was a case from the Federal Circuit which ruled on a contract matter, that is, a claim by an unsuccessful private contractor to set aside a government contract because of conflict of interest allegations of federal employees. CACI Inc., Federal v. United States, 719 F. 2d 1567, 1577-1578 (Fed. Cir. 1983). In that case the Court found that earlier "preliminary exploratory talks", with a prospective private employer, "directed to possibilities that never materialized" were not "negotiations", CACI, Inc., supra at 1578. It should be noted initially, however, that the Court in this case based its finding of a narrow interpretation of "negotiating" partly on the legislative history of the "Ethics in Government Act" (see CACI, Inc., supra at 1576, and 1577), although the provision at 18 U.S.C. § 208 did not originate from, nor was it amended or affected by, the Ethics in Government Act of 1978 (P.L. 95-521, as amended by P.L. 96-19, 96-28, 97-409, and 98-150). Furthermore, it appears that the timing of the "discussions" was the major factor in the Court's conclusion. The Court noted that the discussions existed "at an earlier time", were "directed to possibilities that never materialized", and were thus neither "arrangements" nor presently ongoing negotiations

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7/ Department of Justice letter of August 28, 1985.

or live possibilities since the "discussions all ended" CACI, supra at 1578. The Court thus concluded:

> Our review of the record leads us to conclude that there was no "arrangement concerning prospective employment" between either Anderson or Shelton [federal employees] and Sterling [private employer], and that these individuals were not "negotiating" with Sterling about prospective employment when they considered Sterling's bid.
>
> CACI, Inc., supra at 1577. Emphasis added.

Thus, the issue of whether or not job offers, proposals, or communications directed to private employers which have not ended and which are still "open" offers may be considered "negotiations", might not have been fully resolved nor addressed by the CACI decision. It should be noted specifically that in the District of Columbia Circuit, the United States Court of Appeals in upholding the sufficiency of a Department of Justice indictment under the specific provisions of 18 U.S.C. § 208, ruled that the "negotiating" language in § 208 should be construed broadly "to effectuate the legislative purpose" and intent of the provision. United States v. Conlon, 628 F 2d 150, 154 (D.C. Cir. 1980). Citing to the actual legislative history of the provision, the Court there noted the legislative intent to deal with the "nagging and persistent conflicting interests of the government official who has his eye cocked toward subsequent private employment." United States v. Conlon, supra at 155, n.26, quoting from Conflict of Interest and Federal Service, supra at 224.

The Court in Conlon concluded:

> Moreover, a narrow construction does not comport with the legislative history. The words of the statute must be read so as to effectuate the legislative purpose. This

will often mean giving the words a broad, rather than a narrow, reading. As the Supreme Court put it over a century ago:

> The object in construing penal, as well as other statutes, is to ascertain the legislative intent. . . . The rule of strict construction is not violated by permitting the words of the statute to have their full meaning, or the more extended of two meanings, as the wider popular instead of the more narrow technical one; but the words should be taken in such sense, bent neither one way or the other, as will best manifest the legislative intent.

> Section 208(a) was enacted in 1962 as part of a general revision of the bribery and conflict of interest laws. That revision was prompted by "a growing concern, both in and out of Congress, with the ever present and perplexing problems of how best to assure high ethical standards in the conduct of the Federal Government."

> Section 208 was crafted to "Strengthen" its predecessor section by adding, inter alia, a proscription against participation by an employee of the executive branch in matters of of financial interest to a "prospective employer" or "persons with whom he has business connections." The words "negotiating" and "arrangement," as used in the statute, particularize the kinds of "business connections" encompassed by this provision. In light of the legislative history of the provision, we must conclude that Congress meant the words "negotiating" and "arrangement" in § 208(a) to be given a broad reading, rather than the narrow reading accorded them by the district court.

United States v. Conlon, Supra 154-155.

Actually, in examining carefully the legislative history, it appears that support could be derived for both a narrow and a broad construction of the "negotiating" language, as far as the intent regarding unilateral proposals and offers from federal employees to prospective private employers. It is true that the Bar Association's study from which this provision was modeled, and the House and Senate Reports as discussed in the Conlon case, did note the problem and conflict of interest principle underlying the statute in broad terms, that is, the conflict problem of an employee who "has his eye cocked toward subsequent private employment." However, the Bar Association study continued to say that its proposed statue and "negotiating" language may not cover all the contingencies that arise in such situations, since the language would be similar to some then existing provisions which "do not affect situations in which there is not even a preliminary offer or informal understanding."[8/] It is not clear whether the "preliminary offer" must come from the prospective private employer or could be an offer or proposal initiated by the federal employee as in the question here under consideration, although it arguably may be more logical, given the nature and context of the term "offer", to assume the former rather than the latter.[9/]

8/ Conflict of Interest and Federal Service, supra at 234.

9/ See also Perkins, Roswell B. "The New Federal Conflict of Interest Law" 76 Harvard Law Review 1113, 1133 (April 1963):" . . . it is essential that a clear rantine on official dealings with prospective employers be established as soon as future employment becomes a matter of discussion or understanding."

In sum, its appears that potential violations of the conflict of interest principles underlying the statute at 18 U.S.C. § 208, as well as the obvious potential for appearances of impropriety, may arise where a federal employee, after submitting a specific proposal and contract for prospective employment to a private business, acts on an official governmental matter which affects the finances of that private business. However, it is unclear whether such conduct would constitute a criminal violation of 18 U.S.C. § 208, as taking official action on a matter which affects the financial interests of a business with whom the employee "is negotiating" for prospective private employment.

The common meaning of the term "negotiate" or negotiation" may be broad enough to include the unilateral submission of a specific proposal for consideration as the beginning of the process of "negotiation", at least for a reasonable time during which the proposal or offer is under active consideration. However, an alternative meaning requiring some bilateral communications or discussions could also logically be argued.

As for judicial interpretation, it may be contended that there is a "split" in the circuits concerning whether there should be a narrow or a broad interpretation of the disqualification provision of 18 U.S.C. § 208 with regard to prospective employers. The Federal Circuit in the CACI case concerning a claim by an unsuccessful contractor, required a narrow interpretation of the term, although the crux of the reasoning appeared to be the timing of the "discussions" with the private employer, that is, that they were in the past and had terminated, and thus the employees in question were not currently "negotiating" with the private employer. In the District of Columbia Circuit, in the Conlon case, the

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Court there found that the legislative purpose in enacting the law required a broad interpretation of the term "negotiating", although it did not specifically address unilateral proposals submitted by federal employees to private businesses. The legislative history is likewise not definitive.

As it stands now, the "bottom line" appears to be that the Department of Justice would not now consider seeking an indictment against an employee who merely solicits private employment or business from a private firm and then acts on an official matter for the government which affects the finances of that firm. Given the Department of Justice current position, resolution of the potential conflicts, problems, and appearances which may arise from such a situation may need to be dealt with other than in a criminal context with respect to the current law. Possibilities may include promulgation of regulations, rules or orders in the executive branch, or legislation by Congress, requiring disclosure of all such contacts or overtures, recusal of employees in such situations as in the Department of Army regulations, barring of employment of certain federal employees by private contractors for a period of time after leaving federal employment, or the like, which is deemed, on balance, to be in the public interest.

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October 4, 1985

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Mr. VANDER SCHAAF. In any case, Mr. Chairman, that issue is in the hands of the Justice Department where it properly belongs. And I think we have to wait and see what conclusions they reach.

Mr. SIKORSKI. I think the reason we are here is that it belongs in the legislature, too, if we are going to have people defining negotiations as something that only is triggered by a contract. That is what you told us. If they had come back and said, yes, we are interested or in fact we do have a contract—in the case you cited, the court said the same thing, if they had reached an agreement, then we go back and define that dancing-dating period as a marriage, and as negotiation.

But the point is the public interest with regard to conflict of interest is higher than private interest. And the public interest isn't served by that narrow definition of negotiations.

Mr. VANDER SCHAAF. And please don't get me in the position of saying it is. I'm not trying to defend her actions, Mr. Chairman. I am trying to tell you what we had to work with under the existing law as our counsel advised us with respect to what constituted negotiations.

I make clear in my statement the point that we think that issue has to be addressed, and that it is clearly a legislative problem.

Mr. SIKORSKI. Would it help if we said negotiations begins—if we adopt the U.S. Army standard?

Mr. VANDER SCHAAF. Yes, if Congress passes that. As Chairman Bennett said, get rid of some of the fuzziness in the legislation, and that would be helpful.

Mr. SIKORSKI. How about the Department of Defense and their standards of conduct embracing the Army's standard?

Mr. VANDER SCHAAF. I am not totally familiar with the Army's standards.

Mr. SIKORSKI. You can embrace by regulation for the entire Department of Defense the definition that the U.S. Army uses.

Mr. VANDER SCHAAF. Yes, but that wouldn't give us the application of a criminal penalty in itself. The criminal penalty still has got to come from legislative direction and that is what we both are looking for. We have some penalties in the sense of a violation of the standards of conduct regulation.

Mr. SIKORSKI. Again, it helps direct your employees in that fuzzy area.

Mr. VANDER SCHAAF. Absolutely.

Mr. SIKORSKI. The point on particular matter is similar. You don't find enough to go ahead on the criminal matter, but you bounce it over to DOJ for them to analyze it. They came back with a determination, or at least citing a determination that particular matter may have been reached in the instant, at least in one of the instances we have been talking about here, the meeting with the review council, the work measurement or the field audit issue. Is that correct?

Mr. VANDER SCHAAF. Yes, sir. We didn't try and run away from the problem by sending it to the Department of Justice. We would have to send that case to the Department of Justice under any circumstances if we were interested in prosecution. It has to go there for review, so we forwarded it to the Department of Justice. Our basis was that we would not normally have concluded that that

would be forwarded for a possible prosecution, but we felt that it was gray enough that it ought to be looked at, and they are looking at it.

Mr. SIKORSKI. I thank you.

The gentleman from New York.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Vander Schaaf, did your Department recommend prosecution to the Justice Department?

Mr. VANDER SCHAAF. No, we did not recommend prosecution in this case.

Mr. GILMAN. And that was based primarily——

Mr. VANDER SCHAAF. Primarily on the use of the word, "negotiations," but also with respect to, as the chairman said, the use of the words, "particular matter," since she didn't have a definite detailed relationship on a particular item with the contractors which she has sent the correspondence to.

Mr. GILMAN. Has the Department now formulated a definition of what negotiations encompass?

Mr. VANDER SCHAAF. The Department cannot—that definition has been formulated on these two court cases that we have just referred to here, and we have no authority to change that definition as such. The Congress will have to change that definition by more clearly defining in law what they mean by the use of the term, "negotiations."

Mr. GILMAN. So that I fully understand, what definition are you resting on?

Mr. VANDER SCHAAF. Well, I am not sure what definition I am resting either. That's why we assigned it to the Justice Department for them to sort out. They have a 1976 decision in which they conclude that this might be negotiations. They have a 1983 decision which the chairman says doesn't apply. I'm not sure it doesn't apply, although DOJ says it does according to the 1983 case this wouldn't constitute negotiations in the normal sense of the word.

Mr. GILMAN. So at this point you don't have any standard or any criteria to determine what is or is not negotiations? Is that correct, is that what you are telling us?

Mr. VANDER SCHAAF. Yes, there is some standard. Obviously if the person has come back with a counterproposal, that would constitute negotiations in the normal sense of the word, and we would have so stated. But we have no evidence that anybody came back with a counterproposal or an acceptance of her offer, if she, in fact, made a clear offer.

The offer wasn't even all that clear. You know, the contract is full of blanks. With Magnavox for instance, there is more indication that, yes, this was an offer, a definite kind of offer, but with the others, it is not that clear.

Mr. GILMAN. With Magnavox first there was the solicitation letter, then some conversation, then a May 21—"Following our conversation, I have prepared a description of the consulting service . . ." et cetera, and then a followup to Magnavox a month later—"Call me at my home phone, and we will further discuss it." And all of that, to your mind, doesn't incorporate sufficient facts to warrant a definition of negotiation; is that correct?

Mr. VANDER SCHAAF. That is correct. Now, if you were to take some more testimony and swear in more witnesses, you might be able to establish that it was, in fact, negotiation. I don't know.

Mr. GILMAN. Did your investigation look into the——

Mr. VANDER SCHAAF. We contacted 23 of the 29 people that received information from Ms. Gilleece. The few we didn't contact, one had died and one had a personal relationship with Ms. Gilleece, one could not be reached and three could not be identified within their companies. Two others, I believe, were law firms. It really wasn't applicable to them.

Colonel Keeney, can you tell me what happened to the other ones there? We contacted 23 out of 29, if I have my numbers right.

Colonel KEENEY. Three of them we couldn't find.

Mr. VANDER SCHAAF. Oh, I know what it was. She had stated to us that four people had come to her to ask her about her future plans, and we didn't know who within three of these companies to contact. We had no basis to contact anyone.

Mr. GILMAN. Three people had come to her and asked her?

Mr. VANDER SCHAAF. She indicated, if I recall correctly, in her testimony to my investigators that four people had contacted her, and she had given them some papers and had not actually mailed the papers to them. She had given us the names of the companies, but not the names of the individuals within the companies who received the information.

Mr. GILMAN. In other words, they were inviting an offer from her; is that right?

Mr. VANDER SCHAAF. I don't think it went that far, sir.

Mr. GILMAN. Did she send them material based on their invitation?

Mr. VANDER SCHAAF. She did, I believe, send them material. I want to be sure I get this right.

Colonel KEENEY. On page 3——

Mr. SIKORSKI. Could the gentleman come forward to the table?

Colonel KEENEY. Yes, sir.

Mr. VANDER SCHAAF. This is Col. Donald Keeney. He is in charge of Special Inquiries. That office investigates this type of activity, which may involve people's indiscretions, that we don't believe are criminal at first. If he runs into something that looks like it is criminal, he passes it to our criminal investigations office.

Mr. SIKORSKI. Colonel Keeney, what is your title?

Colonel KEENEY. Sir, I am the Deputy Assistant Inspector General for Special Inquiries.

Mr. SIKORSKI. In the inspector general's office?

Colonel KEENEY. Yes, sir.

Mr. SIKORSKI. If you intend to testify here, you need to be sworn in. Do you have any objection to not having counsel with you?

Colonel KEENEY. I have none whatsoever, sir.

Mr. SIKORSKI. Do you have any objection to being sworn in?

Colonel KEENEY. No, sir.

[Witness sworn.]

Mr. SIKORSKI. Gentleman.

Mr. GILMAN. Thank you, Mr. Chairman.

Colonel Keeney, in your further investigation and followup as to whether or not there were negotiations conducted in this matter, did you contact the Magnavox Corp.?

Colonel KEENEY. Yes, sir, they were contacted.

Mr. GILMAN. And did you personally talk with them?

Colonel KEENEY. No, sir, I didn't. Two of my investigators conducted this inquiry.

Mr. GILMAN. Could you relate to us what conversations or correspondence transpired between Mary Ann Gilleece and the Magnavox Corp.?

Colonel KEENEY. No, I couldn't. I do not have that in front of me I could check and see if my investigators have that. But I could not relate back to you the exact conversation.

Mr. GILMAN. Well, I am not talking about the exact conversation, but you can tell us a number of contacts that there were between Mary Ann Gilleece and the Magnavox Corp. with regard to——

Colonel KEENEY. I believe that the only evidence we have is the one, and as Mr. Vander Schaaf mentioned a while ago, there were 29 people involved, or 29 contacts, and we contacted 23 of those people. And none of those individuals—not that that is a significant element—but none of those individuals felt that there was any type of negotiation whatsoever, and the primary reason being there was no response.

Mr. GILMAN. There was apparent followup between Magnavox and Mary Anne Gilleece. Can you tell us what that followup consisted of?

Colonel KEENEY. I do not have that information.

Mr. GILMAN. Are you aware that there was a followup between Mary Anne Gilleece and Magnavox?

Colonel KEENEY. We are aware that it was a followup, but that she had first contacted them by telephone and then sent them the information. We have no evidence at all that Magnavox ever took it any further than looking at her letter and saying, well, this is interesting and that was the end of it.

Mr. GILMAN. Is that what Magnavox related to you?

Mr. VANDER SCHAAF. No, sir; as I say, I did not talk to Magnavox; my investigator did. I don't know the exact details of the conversation.

Mr. GILMAN. Is there a report on your investigation, the followup with the Magnavox? Is there a written report with the regard to that?

Mr. VANDER SCHAAF. I am sure there are some comments in the investigative file; yes, sir.

Mr. GILMAN. Mr. Chairman, I would like to ask the gentleman if he would produce that report for our committee.

Mr. VANDER SCHAAF. It is not a report. We have also sent all that material to the Justice Department, Mr. Congressman.

Mr. GILMAN. I am asking would you be kind enough to produce the summary of the report by your investigator of his conversations with the Magnavox. And, Mr. Chairman, I would like to make it a part of the record at this point.

Mr. SIKORSKI. Without objection, so ordered.

[The information follows:]

Several comments need to be made concerning our interviews with the individuals Ms. Gilleece contacted concerning her proposed consulting firm.

Although we interviewed 23 of these 29 individuals, we contacted them in two groups. The first group, consisting of 13 individuals, was interviewed prior to completing our report primarily to determine their reaction to the material Ms. Gilleece had provided them. Specifically, we asked this group if they thought Ms. Gilleece was soliciting their advice on the viability of her planned firm or attempting to solicit future business from them. During these interviews six of the individuals volunteered that they never had any discussions concerning the matter with Ms. Gilleece. The others did not offer any information either way on the question of discussions. The volunteered information confirmed sworn testimony given to us by Ms. Gilleece and Captain Mayer and this was the basis for the statement in our report that "we had no evidence of any discussions or expression of interest which we would construe as the beginning of negotiations."

The Department of Justice response to the referral of our report on this matter commented:

"In addition, the report provides insufficient information for us to determine whether or not Ms. Gilleece's acts of participation occurred during the pendency of negotiating. . . ."

In an attempt to supplement our report on this point, we interviewed an additional group of ten individuals Ms. Gilleece had contacted. This second group was specifically asked if they had engaged in any discussions with Ms. Gilleece that might be construed as negotiations. Each of these ten individuals indicated that no such discussions had occurred.

The Magnavox official, who we contacted, was in the first group of individuals we interviewed. He expressed the opinion that he thought this correspondence was intended to solicit a consulting relationship with his firm. This official indicated that he thought the consulting services Ms. Gilleece planned to provide would be worthwhile and that he encouraged her. He also indicated that Magnavox would probably have entered into an agreement with Ms. Gilleece if she had not terminated her plan to form a consulting firm.

Within the context of our question, we understood that he had encouraged Ms. Gilleece with respect to the viability of the concept for her planned firm not with respect to the likelihood of Magnavox being a client. Further, we understood that this encouragement had been offered prior to Ms. Gilleece sending Magnavox the specific written details of her planned venture. We have no indication that he or anyone else from Magnavox contacted Ms. Gilleece subsequent to receipt of her written material.

Mr. GILMAN. Thank you, Mr. Chairman.

Having reviewed all of these reports, did you find any other followups besides Magnavox Corp.?

Mr. VANDER SCHAAF. No; as far as I know, there were none. There could have been, but we do not have evidence of any.

Mr. GILMAN. And your investigator spoke to each one of those 23 people that she solicited?

Mr. VANDER SCHAAF. Yes, that is correct; but we basically asked those people if in their opinion they had started any kind of negotiations with her or what activities followed. And all of them told us that as far as they were concerned they never began any negotiations.

Mr. GILMAN. Mr. Vander Schaaf, in your testimony on page 6, you say that it be improvident to include high policymakers.

Can you tell us why you feel that way?

Mr. VANDER SCHAAF. I don't believe it would be at all improper to include high policymakers, if they are involved in a particular matter. I don't think you can exclude them from all further contacts with any firm that does business with the U.S. Government because they make a general rule on, let's say, a cost or liability provision that impacts all of our contractors. Now, if they become involved in a specific or particular matter, I think it should apply to them just as it applies to anyone else.

Mr. GILMAN. But why shouldn't it apply if they are making broad policy consideration?

Mr. VANDER SCHAAF. I just feel that if you were to make it as broad as that, you would effectively preclude anyone from outside of Government coming to work for the Government. They would almost put themselves in the position where they couldn't go to work again, particularly in certain fields of scientific expertise, or even in certain managerial fields.

Mr. GILMAN. Doesn't the revolving door concept apply to only those contractors that deal with the Defense Department?

Mr. VANDER SCHAAF. It deals with all contractors that deal with the Government, but basically with the Department of Defense.

Mr. GILMAN. Do you think it's unreasonable to apply a 2-year cooling off period?

Mr. VANDER SCHAAF. Absolutely not; I strongly recommend it.

Mr. GILMAN. Why are we being selective? Why are you suggesting that we be selective and apply it only to the lower-rung officials and not to those who make broad policies?

Mr. VANDER SCHAAF. I am in fact recommending that it be applied to the upper officials when there is a particular matter—and this is what I wanted to explain. I mentioned in my statement that you run into some very broad problems. I think it is absolutely no problem when most of our people deal with a half a dozen at most, or maybe a dozen, contractors over a 2-year period on either a continuing basis on what I would call a substantial basis. Most people just don't get involved in any kind of detail beyond a few contractors.

Mr. GILMAN. Then you are saying to us that if there is an Assistant Secretary that's in charge of procurement but doesn't deal specifically with contractor A, B, or C, that he should be excluded.

Mr. VANDER SCHAAF. He should be able to go to work for some of those contractors. Let me try to use an example on——

Mr. GILMAN. You agree that he should be able to work for those contractors?

Mr. VANDER SCHAAF. Yes, if he didn't deal with them on any particular matter. Obviously, George Sawyer had a particular matter in which he dealt with General Dynamics.

Mr. GILMAN. Mr. Vander Schaaf, if I could pursue that—you stress in your investigation report a great deal of emphasis on the perception of a conflict of interest with regard to what Mary Ann Gilleece did. Don't you think that that same perception would apply if an Assistant Secretary in charge of procurement went to work for contractor A, who had a great deal of work with the Defense Department, if he went to work with them within a 2-year period?

Mr. VANDER SCHAAF. Certainly that would apply. Now, if there has been any arrangement, any kind of a particular issue involved, he should be banned from going to work for a 2-year period.

Mr. GILMAN. Let's assume that he didn't have any particular negotiation with contractor A while he was in the Department.

Mr. VANDER SCHAAF. It goes beyond negotiation. I don't want to limit the negotiation at all. Let me try and use an example for you. Let's say we have two contractors—one contractor ABC Corp., and another XYZ Corp. We have a technology they are pushing. We

pushed that technology, let's say, to the exploratory development stage, and we are about to bring that technology into the next stage, or develop a device to implement that technology. But we don't have enough money to do both. We can't go with technology 1 and technology 2, so we have got to select one or the other.

He makes a decision and selects one technology route. To me, he then would be excluded from proceeding to be employed by whatever one of the companies that was recommending the technical approach involved. So if he goes with the ABC technology, he would be excluded from going to work for them for a 2-year cooling off period. But if he writes just general rules and says, from now on we are going to pay progress payments at 90 percent instead of 95 percent, it affects everyone in the Defense industry, I don't think he should be excluded from going to work for a Defense company on that basis.

Mr. GILMAN. It is obvious that some of us have some differing opinions about what the perception would be in that case.

I am pleased to yield to the gentleman.

Mr. SIKORSKI. I thank the gentleman.

You are narrowing the definition on a particular matter. All of this serves to point up the need for this Congress to address the issue of negotiation and particular matter by definition so to eliminate the appearance and the reality of conflict-of-interest problems. Is that correct?

Mr. VANDER SCHAAF. That is absolutely correct.

Mr. SIKORSKI. And that's your testimony, too, Colonel?

Colonel KEENEY. Amen.

Mr. SIKORSKI. Let me say on particular matter, the Department of Justice in its letter to you on particular matter, noted that the term is in 208(a) and 207(c) and it's not reference to involving a specific party or parties that stands alone. The Senate report on 207(c) said the term other particular matter includes general rulemaking and formations of general standards which in this instance Ms. Gilleece certainly was involved in; is that correct?

Mr. VANDER SCHAAF. That's correct. She was involved in rulemaking and general policy matters, there's no doubt about it. But you have to be careful about the rights of individuals here.

Mr. SIKORSKI. I understand that.

Mr. VANDER SCHAAF. OK. That's all I'm trying to say. We ought to think about that a little bit. In most cases and for most individuals, that's not really a major criteria because they only what you would call ——

Mr. SIKORSKI. I'm going to take your testimony that you have concerns about holding off on 2 years with these general policymakers. We have legislative history that goes to saying it's not a particular matter.

Let me focus on a couple of cleanup issues. One is, you——

Mr. GILMAN. Mr. Chairman?

Mr. SIKORSKI. Yes.

Mr. GILMAN. Could I just complete my interrogation because I have to run to another.

Mr. SIKORSKI. Certainly.

Mr. GILMAN. Mr. Vander Schaaf, I want to commend you for your legislative recommendations that you have made.

Does the Department still oppose the Bennett/Boxer revolving door concept?

Mr. VANDER SCHAAF. To the best of my information, I believe they do. The general counsel from the Department is here and so is Dr. Wade, the Acquisition and Logistics Assistant Secretary, and I think you ought to get that from them. But basically, I believe they would oppose it. It's too broad.

Mr. GILMAN. You recommend, though, a cooling off period?

Mr. VANDER SCHAAF. Yes, I certainly do.

Mr. GILMAN. Do you feel that 2 years is——

Mr. VANDER SCHAAF. And I recommend it for more than just contract negotiations. It ought to affect auditors, it ought to affect other people, and that goes beyond the Bennett/Boxer legislation.

Mr. GILMAN. Essentially, then, you adopt the general concept of the Bennett/Boxer?

Mr. VANDER SCHAAF. Absolutely, absolutely. I hate to get in a position here of sounding to the chairman, that I was negative on this thing. Let me read something to you, I think it's important. We have our fights sometime in the Department of Defense. I will read you two paragraphs, if I may, out of a short memo that we sent the legislative people because we had all kinds of "revolving door" bills pending last spring and early last winter. Let me tell you what we said:

> The issue surrounding conflict of interest, gratuities and past government employment have a high priority within Congress. At least 17 bills have been introduced dealing with these subjects. The Department reply should recognize that some legislation will be passed because existing legislation is widely viewed as ineffective.
>
> Rather than emphasizing what the Department believes to be the negative aspects of this particular bill, the report should focus on those provisions of pending bills which would overcome the apparent and real problems of conflict of interest of Government procurement personnel. It seems to me that our attitude should be one of recognizing that legislation dealing with the revolving door problems will pass, that it may be needed, and that we should attempt to steer this legislation in ways that will have its intended effect without unduly trampling the rights of our employees or creating a new paperwork monstrosity."

Mr. GILMAN. What was the date of that?

Mr. VANDER SCHAAF. This is May 29, 1985. I can give you correspondence going back to January 1985 with Congresswoman Boxer, but we have again urged the Department of Defense to take a more, should I say, stringent position on conflict of interest and the revolving door problem in particular.

Mr. GILMAN. But the Department doesn't agree with your recommendation; is that correct?

Mr. VANDER SCHAAF. That, I believe, is correct. You will have to ask them when they testify.

Mr. GILMAN. Mr. Vander Schaaf, just two more questions.

Mr. SIKORSKI. Do you want that inserted in the record?

Mr. GILMAN. Yes, thank you, Mr. Chairman, with your permission, if we could insert that memorandum at this point in the record.

Mr. SIKORSKI. Without objection, that will be the case.

[The memorandum follows on next page.]

Mr. GILMAN. You had mentioned something about the reports of post-Government employment reports and that there has not been a sound monitoring system and no followup.

DEPARTMENT OF DEFENSE
INSPECTOR GENERAL
WASHINGTON, D.C. 20301

29 MAY 1985

MEMORANDUM FOR DIRECTOR, LEGISLATIVE REFERENCE SERVICE

SUBJECT: Proposed Reply to H.R. 2356, 99th Congress, "Department of Defense Conflict of Interest Act of 1985"

I disagree with the approach and tenor of the proposed Department response to H.R. 2356.

The issues surrounding conflict of interest, gratuities and past Government employment have a high priority within the Congress. At least 17 bills have been introduced dealing with these subjects. The Department reply should recognize that some legislation will be passed because existing legislation is widely viewed as ineffective.

Rather than emphasizing what the Department believes to be the negative aspects of this particular Bill, the report should focus on those provisions in pending bills which would overcome the apparent and real problems of conflict of interest of Government procurement personnel. It seems to me that our attitude should be one of recognizing that legislation dealing with the "revolving door" problem will pass, that it may be needed and that we should attempt to steer this legislation in ways where it will have its intended effect without unduly trampling the rights of our employees or creating a new paper work monstrosity.

Joseph H. Sherick
Inspector General

What is the reason for that?

Mr. VANDER SCHAAF. We haven't devoted the people we need to follow it up.

Mr. GILMAN. Is there a penalty for not reporting?

Mr. VANDER SCHAAF. I believe there is a $1,000 fine presently.

Mr. GILMAN. Has that fine ever been imposed?

Mr. VANDER SCHAAF. It never has been imposed to the best of my knowledge.

Mr. GILMAN. I was appalled to see that more than 70 percent of employees do not report.

Mr. VANDER SCHAAF. That is a GAO estimate, yes, sir. My office has done some work on that as well. I didn't go into the business of numbers of reporting, but we found some problems with the system as well. We found that it has become merely a clerical process, that is if you filled in all the blanks in your report, it didn't make much difference what you put in the blanks, your report went through. And if you didn't fill in all the blanks, they would send it back to you and ask you to do it. But if you never filed a report, ever, the probabilities are that you would never be asked to file one in year 2 and year 3 of a 3-year provision.

Mr. GILMAN. Has your Department made any recommendations?

Mr. VANDER SCHAAF. Yes, we have made recommendations to the Department to change that procedure, to put some emphasis on it. We have recommended in my statement also that Congress might want to get more specific on what kind of information has to be provided.

Mr. GILMAN. Has the Department followed up on your recommendations?

Mr. VANDER SCHAAF. They are in the process of issuing a new Standards of Conduct regulation. I believe that will address the situation. However, we may also require some legislation. I believe the conference report on the defense authorization bill has some provision in it which will toughen up this reporting requirement as well.

Mr. SIKORSKI. To its credit, if I might interrupt, as dismal as the job is, Defense does the best job, or one of the better jobs, in post-employment monitoring.

Mr. VANDER SCHAAF. One of our services seems to do a particularly good job.

Mr. GILMAN. We hope that your recommendations will be pursued, and I thank the gentleman for his testimony.

Thank you, Mr. Chairman.

Mr. SIKORSKI. Gentlemen, a couple of final matters. And I thank you and your agency for assisting us as well as you do, it's appreciated, and it's welcome and quite helpful.

I want to ask you about the advice given to Ms. Gilleece from DOD. Your report concludes that she received inadequate advice with regards to the ethics violation. Is that a fair summary?

Mr. VANDER SCHAAF. That's a fair summary, yes. We think that the legal advice in terms of violating any legal statute was only adequate or it was fair at best. There should have been more sensitivity to our own Standards of Conduct issue.

But we have a problem there. We have some conflicting testimony from Ms. Gilleece and from Mr. Ream, who is here this morn-

ing, with respect to who said what to whom, and to what degree of detail. I think that's important. We couldn't really make a final conclusion on that, because, again, we didn't have any paper evidence. We made the recommendation that from now on when the ethics counselor sits down with an individual and gives advice, a memorandum is created which is given to the individual who sought the advice, and they both agree that these were the subject's questions, and these were the recommendations and procedures that the ethics counselor recommended. In that way, we won't have this kind of argument again about who said what and in what detail.

Mr. SIKORSKI. What the basis of the advice was, because I understand you said on page 9 of your report, you were concerned because—

> Evidently Mr. Ream didn't realize the sensitive nature of her position within the Department and more strongly emphasize the need to absolutely and totally avoid conflicts between her official duties and private interests.

As I understand it, he didn't ask for her job description or duties. Is that correct? Or he was not informed of them at the point he talked to her about the law?

Mr. VANDER SCHAAF. I hope you ask him that question. I believe that's correct, but I cannot say with certainty.

Mr. SIKORSKI. And as I understand, she didn't provide him any indication of what she intended to do in terms of solicitation or paper work.

Mr. VANDER SCHAAF. She provided him some oral statements but she did not provide him any of the proposed letters, or the proposed contract, or the agreement. And that is material that I think would have helped to alert him to send the red lights off in his mind, that this is a possible problem of an extreme nature. He apparently indicated to her that it might be a problem of perception and one that you wouldn't want to get in the newspapers. But I don't think he really had enough material to see what the full potential problem was that laid ahead for him.

Mr. SIKORSKI. At the time his advice was given, apparently he didn't appreciate her responsibilities and duties as Deputy Under Secretary, or assistant to the Deputy Assistant Secretary.

Mr. VANDER SCHAAF. I think he appreciated those duties. I asked him that, I believe. I don't think he really understood, one, how many firms she was going to contact, or did he have the exact nature of that contact. I think he came away with the opinion that she was going to orally contact a limited number of firms with no particular contract being presented. And all of these are the details that have tied us, you and I, up in this discussion of whether or not she violated section 208.

Mr. SIKORSKI. But he certainly wasn't sensitive to the nature of her position. That's what you say in your report.

Mr. VANDER SCHAAF. Yes, I guess that's a fair statement. But, again, ask Mr. Ream for his opinion on that.

Mr. SIKORSKI. Also, Dr. Wade and her supervisor and the General Counsel, Mr. Cox, seem to have ignored the significance of her activities as well. Isn't that correct?

Mr. VANDER SCHAAF. No; I don't believe that's correct.

Mr. SIKORSKI. Well, with regard to this conflict of interest.

Mr. VANDER SCHAAF. I think they might have reacted quicker. But, again, they didn't know the full extent to which this was going on. You understand that——

Mr. SIKORSKI. I understand that, but that's what supervisors and above people are for, to extract that. You can't hide behind ignorance of the facts without someone posing a question of why didn't you find out.

But beyond that issue, their response was: File a limited disqualification a few weeks after her initial solicitations went out. That doesn't rise to the problem, as you reported in your report, isn't that correct?

Mr. VANDER SCHAAF. That's correct. It doesn't take care of the perception problem here at all, and the perception problem becomes in fact reality when you get to this kind of a situation.

Mr. SIKORSKI. It is not a perception—it was a problem with the Standards of Conduct.

Mr. VANDER SCHAAF. Yes, probably. But they wouldn't have been violated had she recused herself properly. I think it's also that she had dealt with a lesser number of firms.

Mr. SIKORSKI. How could she recuse herself?

Mr. VANDER SCHAAF. How could she recuse herself?

Mr. SIKORSKI. Yes.

Mr. VANDER SCHAAF. She could say: I am going to start contract negotiations with firm X and I will not deal in any matter with firm X. I will not do anything with respect to that firm.

Mr. SIKORSKI. But you point out in your report you got these specific policymaking decisions that affect not only firm X but A through Z.

Mr. VANDER SCHAAF. But contacting one or two firms may be one thing, but when you start getting into, 24 or 30 of the major defense contractors, you have got a problem.

Mr. SIKORSKI. Somehow I misinterpreted your report or you are not standing by your report. I thought your conclusions were based on the nature, as you call the sensitive nature of her position, affecting the whole realm of defense contractors.

Mr. VANDER SCHAAF. Absolutely in its totality, sir. What I am trying to say is it could have been handled differently and we would not have had this problem.

Mr. SIKORSKI. How could she have recused herself, disqualified herself, from her position as policymaker, rulemaker, adviser, memo writer, testifier before Congress? How could she have gotten out of that position?

Mr. VANDER SCHAAF. It's a difficult problem. I don't know where you would draw the line, and where I would draw the line might be different. But I understand that when people come into Government, into the kind of position she had, at some point they know they have to leave. And when they leave, they have to have some other work to make a living.

Mr. SIKORSKI. Do you agree that she couldn't recuse herself in a situation that would avoid the appearance of a conflict of interest?

Mr. VANDER SCHAAF. I think she could with a limited number of firms. Now, you may disagree with that, but I think she——

Mr. SIKORSKI. How? Tell me how she does that.

Mr. VANDER SCHAAF. She simply notifies the people underneath her and the people above her that she is going to begin contract negotiation or she is going to try to gain employment with X firm and no longer takes part in any particular matter that affects X firm.

Mr. SIKORSKI. And what does she do when the measurement issue comes through?

Mr. VANDER SCHAAF. I don't think that affects any particular firm. It would affect all the firms.

Mr. SIKORSKI. What's the difference? If it affects all, it affects A——

Mr. VANDER SCHAAF. Yes, sir.

Mr. SIKORSKI. And X.

Mr. VANDER SCHAAF. Yes.

Mr. SIKORSKI. OK. What's the difference between only affecting X and affecting A through Z, including X? I'm the X on X's business. What's the difference?

Mr. VANDER SCHAAF. The difference is the degree.

Mr. SIKORSKI. How is the difference on X's business not degree? It affects X.

Mr. VANDER SCHAAF. But if it affects A—I guess I should not say degree but scope.

Mr. SIKORSKI. Yes, but it still affects X, and she's dealing with X.

Mr. VANDER SCHAAF. Certainly. But we are dealing with a difficult problem here, I don't deny that.

Mr. SIKORSKI. But you are holding out—and I think this is the case—you are holding out a hypothetical situation that doesn't rise to the problem.

Mr. VANDER SCHAAF. No, I'm not holding out——

Mr. SIKORSKI. How does she recuse herself on the field audit situation with regards to X?

Mr. VANDER SCHAAF. She cannot recuse herself in terms of that whole industry. She has to deal with the issue probably otherwise, she could just as well resign, and she couldn't do anything. She could not possibly look for work with a defense firm. Now, there are other firms to go to work for, obviously, outside those that do any business with the Defense Department. But in her situation, if she wanted to work for a defense firm in one way or another, she would have to begin to make some discussions. She should have laid it out and dealt with a limited number of them early on.

Mr. SIKORSKI. You haven't told us how she could get out of the situation.

Mr. VANDER SCHAAF. I think she had to recuse herself for the limited number of firms and seek employment. The other was simply to resign before she started any activity whatsoever. That's a hard standard to follow, but if the Congress in its wisdom——

Mr. SIKORSKI. There are other things she can do within the Department of Defense that remove her from the rulemaking, or policymaking position that affects these firms. There are a whole host of jobs she could have done, or assignments she could have taken that would have had no direct or predictable, or even indirect, impact on firms she was negotiating with.

You are saying she should have just done Magnavox or a couple of others. The problem that you point out in your report is still there for Magnavox, 1 of 300.

Mr. VANDER SCHAAF. It's there to some extent, and I think——

Mr. SIKORSKI. No, no, it's there to the same extent. It's just not there multiplied by 29, or 31, whatever the instance is. The law doesn't specify degree or scope as you define it. The law specifies instance, an incident. There are a whole host of things she could have done at Defense that would not have brought her into conflict with the standards. So the options weren't resigning or doing as she did.

Mr. VANDER SCHAAF. As far as I know, those options at Defense were not available to her. Maybe we in Defense should have been more sensitive and found another position for her. But that would not be an easy chore either. Administratively and realistically you can't just assign her somewhere else.

Mr. SIKORSKI. What you are saying is we should buy into conflicts of interest because it's an administrative problem. And that raises the issue there appears to be a lack of interest and attention by supervisors, including Mr. Cox and Mr. Wade, with regard to these conflict-of-interest problems.

Mr. VANDER SCHAAF. I don't think so. They had a fairly clear understanding of what was allowed and what wasn't. This ran off alarm bells in their minds also. Remember, I didn't know anything about this; it was the General Counsel who came to me and said, "Hey, you ought to look into this situation—we think we know the facts, we don't think she has violated any law, but come take a look." I said I would and we did. I think the report speaks for itself. As far as our position goes, Mr. Chairman——

Mr. SIKORSKI. He didn't know they had sent these things to 29 Defense contractors.

Mr. VANDER SCHAAF. Did he what?

Mr. SIKORSKI. He didn't know that she had sent—they didn't know what she had sent.

Mr. VANDER SCHAAF. They had known—and, again, you should ask them about the letters—but my understanding is that they knew she had sent this to a number of contractors, particularly after they became involved around the end of June, the 25th of June and thereabouts.

Mr. SIKORSKI. Dr. Wade was saying that she did all right, she did OK, there was no problem.

Mr. VANDER SCHAAF. I will let Dr. Wade defend that. He is here to defend it.

Mr. SIKORSKI. This is all the way back to July 26. In the New York Times, it said, Dr. Wade, in a news conference last week, said he believed Ms. Gilleece had done nothing improper, though her conduct had embarrassed the Department, and batten down the hatch on the issue.

At least they didn't know what was going on in terms of her solicitations. That's a fact, isn't it? Early on?

Mr. VANDER SCHAAF. Early on, they didn't. I think they did by July, whatever date you just mentioned.

Mr. SIKORSKI. The 26th.

Mr. VANDER SCHAAF. The 26th of July.

Mr. SIKORSKI. Let me look at the final matters. You referred the Gilleece case to the Justice Department, did you not?

Mr. VANDER SCHAAF. We did.

Mr. SIKORSKI. And the purpose of sending your letter to Justice, your report over to Justice, was what?

Mr. VANDER SCHAAF. Because they are the responsible office for making these determinations and——

Mr. SIKORSKI. The clarification on the issues and——

Mr. VANDER SCHAAF. We needed the clarification on those two issues—negotiation and particular matters—as we have discussed here most of the morning.

Mr. SIKORSKI. You didn't refer it for prosecution?

Mr. VANDER SCHAAF. We did not refer it for prosecution. We felt that we didn't have evidence under the statute. Now, if the Justice Department believes that constitutes evidence——

Mr. SIKORSKI. So it's over in Justice for clarification of particular matter and negotiation. Has Justice responded?

Mr. VANDER SCHAAF. What was your question, Mr. Chairman?

Mr. SIKORSKI. Has Justice responded?

Mr. VANDER SCHAAF. Yes, Justice has responded, and they asked for additional information.

Mr. SIKORSKI. You have supplied them with additional information?

Mr. VANDER SCHAAF. We supplied them that additional information.

Mr. SIKORSKI. Have they opened their own investigation into the possible wrongdoing by Ms. Gilleece as far as you know?

Mr. VANDER SCHAAF. I don't know to what extent they have opened an investigation and to what extent they are reviewing our files and data.

Mr. SIKORSKI. Have they contacted you since you provided them additional information on September——

Mr. VANDER SCHAAF. Not formally. We have offered on two occasions to have our investigators go and brief them in detail, and they said they wanted to become familiar with the information in our files and the data behind it before they discussed it in great detail with the investigators.

Mr. SIKORSKI. What have they told you?

Mr. VANDER SCHAAF. They haven't told me a thing, sir.

Mr. SIKORSKI. Don't call us, we will call you?

Mr. VANDER SCHAAF. I don't recall saying anything like that. But we did make the offer.

Mr. SIKORSKI. Do you have anything to add?

Mr. VANDER SCHAAF. I want to add that I think it is unfortunate that you are putting me in the position of trying to defend the system here that——

Mr. SIKORSKI. No, no, I didn't——

Mr. VANDER SCHAAF [continuing]. I didn't invent and I don't support, but we have to live by the rules and regulations the best we can. And we are suggesting——

Mr. SIKORSKI. Let me say I think you have done an excellent job, you have helped us. The purpose of our discussion this morning was to point out the thicket that we are in with some of these definitions and to assist us in making recommendations to the full

committee in the Congress on changes that will assist you and us in clearing up some of the problems. That's the purpose in discussions this morning. You have certainly helped. I think you have encouraged us to tighten up the definitions on negotiations and particular matters.

Mr. VANDER SCHAAF. There's one other point I would have to make, and I have with me some examples, generic; I don't want to use the names of maybe 15 or 20 revolving door cases that have been brought to our attention since we came into being in 1983.

As I said in my statement, not one of those individuals has been prosecuted. In fact, we don't even forward a lot of them to the Justice Department because we feel they won't be prosecuted; some are forwarded and some are not. Prosecutors don't like to lose cases. You look at the law, the background of the case and the existing conditions, and they are not about to try those cases.

So that's why we have said, and I have recommended repeatedly, that we have some contractual remedies with respect to this problem. I think that they would be more effective than some of these criminal remedies, and it would be less difficult to enforce.

Mr. SIKORSKI. I think you have helped us a lot. You set up—and maybe if you would like to follow up for the record on those kinds of instances where additional congressional action would be helpful, we would like that as well.

You have through your report, your testimony, highlighted an instance that in turn highlights some of the difficulties—only some of the difficulties. You have gone beyond that in your recommendations to point out other problems that you have had. By your submission here this morning you have given us further evidence of changes that you believe are necessary.

What we know is that the full Department doesn't buy into that. We know that they look with antagonism toward the kinds of changes that Bennett/Boxer are proposing. We are going to find out what they are going to do with their standards of conduct, and we will be monitoring them after the authorization legislation and the appropriation legislation passes as well.

But you have been helpful and I commend you for your efforts, and support you in your further efforts, and underscore that what you have provided us today has been most helpful. Although, perhaps in the context of a defensive nature, it's not perceived as such.

Mr. VANDER SCHAAF. Thank you, Mr. Chairman, I appreciate it. I would be happy to supply for the record my suggestions for provisions in legislation on "revolving door."

Mr. SIKORSKI. Thank you.

[The information follows:]

The Office of the Inspector General believes that additional legislation should contain certain elements in order to address fully the "revolving door" problem. Those elements are:

Require a cooling-off period between the time an employee stops exercising procurement related responsibilities for the Government and begins working for a Government contractor with whom he or she had a continuing or substantial working relationship.

Impose contractual sanctions on contractors, in addition to criminal penalties for violations, and enforce the sanctions through terms in Government contracts. These sanctions should be in addition to civil or criminal actions against the individual.

Specifically identify those classes of official duties which would be subject to this "cooling-off" requirement.

Make any changes in law applicable to all branches and activities of the Federal Government.

Increase the amount of information which former Government employees with procurement-related duties must report regarding their employment with contractors, and require the reports to be analyzed for possible violations by a person's former employing department or agency.

All provisions with respect to a "particular matter" should apply uniformly throughout the Government to all types of civilian officials, as well as to members of the Armed Services. However, some type of exclusion must be adopted for policy and rule making officials whose duties do or could financially impact large numbers of contractors.

Mr. SIKORSKI. Our next witnesses include representatives of the Department of Defense. The Honorable Chapman B. Cox is General Counsel for the Department of Defense. He is accompanied by Dr. James Wade, Ms. Gilleece's superior, and the Acting Under Secretary for Defense Research and Engineering; and Mr. David Ream, DOD's ethics counselor in the Office of General Counsel. We only see Mr. Cox.

TESTIMONY OF CHAPMAN B. COX, GENERAL COUNSEL, DEPARTMENT OF DEFENSE, ACCOMPANIED BY JAMES P. WADE, JR., ACTING UNDER SECRETARY FOR DEFENSE RESEARCH AND ENGINEERING, AND DAVID W. REAM, ETHICS COUNSELOR

Mr. Cox. They are both here, sir, and I would like to give a statement first, if you don't mind, and then when you are ready to ask questions, they will come up.

Mr. SIKORSKI. Why don't we swear you all in at the same point. Come on up. Do you gentlemen have any objection to appearing without counsel?

Mr. Cox. No.

Mr. SIKORSKI. If not, do you have objection to being sworn in?

Mr. Cox. No, sir.

[Witnesses sworn.]

Mr. SIKORSKI. Mr. Cox, do you have a statement you would like to give?

Mr. Cox. Yes, sir, I would like, with your permission, to submit my prepared statement for the record and then I would like, by way of summary to make a few comments relating to the statement.

Mr. SIKORSKI. Very good, that will be done.

Mr. Cox. First of all, I think it is important to note that the movement of persons between the private sector and Government service is a major strength of our democratic system, and it should be encouraged in all three branches of the Government.

However, that movement should occur in accordance with strict ethical standards and public accountability. Such standards must effectively prohibit the Government employee from using his or her influence or official position: First, for personal gain; second, to the detriment of the Government; and third, in a manner which gives an unfair advantage to a private entity.

The second general point I would like to make about my formal statement is that the Defense Department is strongly committed, notwithstanding assumptions to the contrary expressed here earlier, to the development and enforcement of such standards.

We believe that the existing laws and regulations establish appropriate ethical standards and criminal offenses. However, the following improvements are needed:

First, enhancing our departmental ethics education program;

Second, devoting more people resources in our Department to our enforcement and monitoring efforts;

Third, increasing the reporting requirements concerning predeparture employment discussions and also the nature of postdeparture employment;

Fourth, granting the Department some jurisdiction over its past employees who are no longer members of the Department; and

Fifth, developing additional administrative and civil remedies which can be used by our Department when prosecution is considered not warranted by the Justice Department, or is not adequate.

These five improvements have been pursued with the Congress in the context of Senate bill 1160 which the Department fully supports. That Senate bill is now in the conference report.

The third point I would like to make in summary: We do not support imposition of restrictions on dedicated employees who have not engaged in improper conduct just to make it easier to hold accountable persons who misbehave, especially when other effective measures are available to deal with misbehavior.

A broad prohibition on post-Government employment in an industry where our employees have developed experience and expertise would be unfair to our honest and dedicated employees. Such restrictions would also make it difficult to recruit both talented young people and competent experts into the Department's service, which is very key to our national defense effort. We should not resort to severe broad measures before other approaches, such as contained in Senate bill 1160, are tried.

My fourth general comment is that it is not possible to prevent poor judgment. But in those cases, administrative remedies provide the appropriate reaction to bad judgment. It is not sound penal philosophy or management policy to convert bad judgment into a crime, or, in an effort to deter it, place overly broad restrictions on sensible employees.

Finally, with respect to Ms. Gilleece, we are restrained by the Justice Department from making any direct comments about her conduct or stating any conclusions concerning disposition of the pending investigation at the Justice Department.

Mr. SIKORSKI. Mr. Cox, that's a most curious and offensive statement. Would you provide me at this point the basis for that statement, both the factual basis with regards to Justice restraining you from making any comments, and the legal basis?

Mr. COX. We have discussed this with Justice Department, sir. They have told us we can testify with respect to conduct that we are responsible for and with respect to things that are in our direct knowledge. But we cannot testify with respect to her conduct or the conclusions of their investigation, which is under way. It would be improper.

Mr. SIKORSKI. They have an investigation under way into the Gilleece matter?

Mr. COX. Yes, sir, that's my understanding.

Mr. SIKORSKI. Beyond the issue of clarifying the term negotiation or particular matter?

Mr. COX. They are in the process of clarifying the terms of negotiation and particular matter as it relates to her conduct. And if under that clarification they believe that there may have been a crime committed, they would be in a position to prosecute.

Mr. SIKORSKI. They have no investigation—they have no referral for prosecution, and they have no investigation with regards to taking any criminal action against Ms. Gilleece .

Mr. COX. They have the investigative material from our inspector general.

Mr. SIKORSKI. And so do we.

Mr. COX. Yes, sir.

Mr. SIKORSKI. The answer to my question is what?

Mr. COX. Pardon?

Mr. SIKORSKI. Do they have any further investigation beyond what we have?

Mr. COX. I don't know if they have any formal investigation under way.

Mr. SIKORSKI. I said do they have any further investigation?

Mr. COX. They are investigating the applicability of these statutory criteria for a crime against Ms. Gilleece.

Mr. SIKORSKI. So, again, what is the legal basis for your restraint, as you term it?

Mr. COX. The legal basis is that this case is still a pending matter and still under investigation as to whether a crime was committed.

Mr. SIKORSKI. There is no testimony to that, and you have no knowledge as to whether they have any investigation going beyond the report and the additional materials that have been provided by the inspector general; isn't that correct?

Mr. COX. It is correct that I do not know whether they have a formal investigation under way at this time.

Mr. SIKORSKI. You do not know whether they have any investigation beyond review of the materials that the Department of Defense inspectors general provide them and us?

Mr. COX. Yes, sir, but I do know that those matters are under investigation.

Mr. SIKORSKI. That issue is a red herring.

Now, I want you to know without any misunderstanding that this subcommittee will not assist you in putting any kind of restraints that don't exist in the law or in our structure of Government on our investigatory responsibilities, duties, or reach. Do you understand that?

Mr. COX. Yes, sir. We are prepared to testify as to things that are in our direct knowledge.

Mr. SIKORSKI. Let me just also add that the jurisdiction of this subcommittee is definite, determined, and without any objection, that I understand as to appropriateness by you; is that correct?

Mr. COX. The jurisdiction of this committee over this matter?

Mr. SIKORSKI. Yes.

Mr. COX. Yes, sir.

Mr. SIKORSKI. Let me insert in the record at this point, then, a memorandum from the General Counsel of the Clerk of the House of Representatives dated October 4, 1984, to the chairman of the

Subcommittee on Investigations and Oversight of the Committee on Science and Technology, dealing with a similar instance which sets out very straightforwardly the reach and scope of investigations of subcommittees and committees of Congress.

[The memorandum follows:]

Office of the Clerk
U.S. House of Representatives
Washington, D.C. 20515

October 4, 1984

MEMORANDUM

TO: The Honorable Albert Gore, Jr.
Chairman
Subcommittee on Investigations and Oversight
Committee on Science and Technology

FROM: Steven R. Ross SRR
General Counsel to the Clerk

Charles Tiefer CT
Assistant General Counsel to the Clerk

This memorandum addresses the legal merits of the Federal Emergency Management Agency's decision to refuse to comply with the subcommittee's document request. The agency, by letter dated September 27, 1984, put forward several justifications for this refusal.

As explicated more fully below, the Agency's arguments are without legal merit and do not justify Director Gruffrida's continuing refusal to provide the subcommittee with the documents it seeks in pursuance of a valid legislative oversight inquiry.

In declining to provide the documents, the Agency stated that it was "concerned about the integrity and the confidentiality" of these documents. The Agency also claims that these documents may relate to possible violations of federal statutes and that, therefore, "it would be inappropriate to share this raw data with anyone outside the law enforcement community."

Finally, the Agency expresses its concern that access to these documents by the Subcommittee "could lead to an embarrassing violation of privacy of both FEMA employees and citizens outside of the government, who otherwise enjoy strict confidentiality under the provisions of the Privacy Act."

While it is entirely appropriate for the Agency to express to the subcommittee its misgivings about drawing conclusions from incompatible records and its concern for avoiding public disclosure of these documents, those fears do not constitute or even approach a valid legal justification which serves to defeat this subcommittee's constitutional right to those records. The agency's stated reasons, that the documents may reflect criminal activity within the agency or by its contractors and that the documents might be embarrassing are woefully inadequate even when compared with other recent, albeit improper, claims of privilege by the executive branch.

It should be noted at the outset that the agency has not formally claimed any privilege on its own or in the name of the President to excuse its non-compliance with the subcommittees request. Rather it has simply refused to provide the documents.

Prior to discussing the Agency's claims, it is important to review the subcommittee's constitutional basis for its request.

The Congress' authority to conduct investigations in general and to oversee the executive branch in particular are derived from the Constitution and have long been recognized by the courts.

Congress has the authority to conduct an inquiry into any subject "on which legislation could be had." McGrain v. Daugherty, 273 U.S. 135, 177 (1927). This is so because a "legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." Id. at 175.

In short, "[t]he scope of the power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution," Barenblatt v. United States, 360 U.S. 109, 111 (1959).

Not surprisingly, the Supreme Court has recognized that subsumed within this general investigatory authority is specific responsibility concerning the activity of the federal governmental apparatus. As the Supreme Court has stated, "[t]he power of Congress to conduct investigations is inherent in the legislative process. It encompasses inquiries concerning the administration of existing laws, as well as proposed or possibility needed statutes. It includes surveys of defects in our social, economic, or political system for the purpose of enabling the Congress to remedy them." Watkins v. United States, 354 U.S. 178, 187 (1957). The Court proceeded to note that this authority "comprehends probes into departments of the Federal Government to expose corruption, inefficiency, or waste." Id.

Clearly, in seeking the documents at issue here, the Subcommittee was engaged in the legislative task of "informing"

itself and the House on a matter within the Congress' jurisdiction.

Pursuant to House Rule X, the Committee on Science and Technology has jurisdiction over various non-military scientific research and development functions of the federal government. The Committee is also specifically provided with "the special oversight function . . . with respect to all non-military research and development." H. R. Rule X(1)(r), Rules of the House of Representatives, § 687, reprinted in Constitution, Jefferson's Manual and Rules of the House of Representatives, H. R. Doc. No. 171, 97th Cong., 2d Sess. (1983)(Rules of the House of 98th Congress).

The Committee's Subcommittee on Investigation and Oversight is empowered to conduct a continuing review and study of the "application, administration, execution and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of the committee" and is further authorized to study, on a continuing basis "the organization and operation of the Federal and private agencies and entities having responsibilities in or for the administration and execution" of such laws." Rule 25(f) of the Rules of the Committee on Science and Technology, (adopted February 2, 1983), reprinted in Rules Adopted By the Committee of the House of Representatives for the 98th Congress. (Rules Committee Print).

This subcommittee's jurisdictional basis for conducting an inquiry with respect to these matters is beyond dispute and the agency has not questioned the jurisdictional appropriateness of the subcommittee's investigation.

Turning to the legal sufficiency of the Agency's claim it must be noted at the outset that the Subcommittee has not been provided with any legal authority supporting the Agency's contention. This is not surprising for no valid legal authority exists for the sweeping claim of non-presidential executive privilege which is the underpinning of the Agency's declination.

Throughout the Agency's letter, there is the consistent theme that disclosure to the Congress is the legal equivalent of improper disclosure. This notion has been specifically rejected by the Courts. Exxon Corporation v. FTC, 589 F.2d 582, 589 (D.C. Cir. 1978).

Similarly, the agency's citation to the Privacy Act is inappropriate. Statutes which govern the public's access to executive agency information do not purport to govern or limit the Congress' plenary authority to conduct oversight inquiries. See 5 U.S.C. 552(c)("Freedom of Information Act")("This section is not authority to withhold information from Congress"); and, 5 U.S.C. 552a(b)(9) ("Privacy Act")(Specifically exempting from the statutory protections disclosures "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;")

Thus when the Agency raises, as it does in its September 27, 1984, letter, the privacy rights protected by the Privacy Act it ignores the plain language of that statute.

The Agency also states that one reason for not providing the subcommittee with access to the documents is that the files could, at some point, be provided to the Department of Justice. This constitutes a mere pale shadow of the "law enforcement sensitive" claim advanced with regard to papers withheld by the Administrator of the Environmental Protection Agency. See Contempt of Congress, Report of the Committee on Public Works and Transportation (Contempt Proceedings against Anne M. Gorsuch), 97th Cong., 2d Sess., H. Rep. No. 97-968; Investigation of the Environmental Protection Agency, Report on the President's Claim of Executive Privilege over EPA Documents, Abuses in the Superfund Program, and Other Matters by the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce; 98th Cong., 2d Sess., Comm. Print 98-AA.

If all records which could one day be transmitted to the Department of Justice were beyond the scope of the congressional investigative authority, then the field of congressional oversight would be narrow indeed. Such a limited interpretation of this authority would render many Supreme Court statements in this area meaningless and would also, in complete abrogation of our constitutional framework of checks and balances, permit exclusive jurisdiction to investigate executive wrongdoing to the executive branch.

Clearly, the Court, in providing that Congress could conduct "probes into departments of the Federal Government to expose corruption . . .," Watkins, supra, did not anticipate that a department could effectively foreclose such an investigation merely by observing that it might refer the information to another executive Department.

In fact, the Supreme Court has explicitly endorsed the authority of the Congress to probe even the Department of Justice with regard to specific enforcement and prosecutorial decisions relating to the application of our criminal statutes. Thus in McGrain v. Daugherty, 273 U.S. 235 (1926), the Court observed that

> The subject to be investigated was the administration of the Department of Justice--whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings . . . the subject . . . would be materially aided by the information [sought] . . . the functions of the Department of Justice, the powers and duties of the Attorney General and the duties of his assistants, are all subject to regulation by congressional legislation, and . . . the department is maintained and its activities are carried on under such appropriations as in the judgment of Congress are needed from year-to-year.

273 U.S. at 177-78.

It has even been recognized that it is entirely proper for a Congressional investigation to proceed concerning a subject matter on which there is a pending criminal trial. Hutcheson v. United States, 369 U.S. 599 (1962). See also United States v. Romano, 583 F.2d 1 (1st Cir. 1978); Beck v. Washington, 369 U.S. 541 (1962).

In light of these and other similar precedents, it si inconceivable that the mere possibility of a referral to the Department of Justice would defeat the Congress' plenary authority to oversee the execution and administration of our nations laws.

For these reasons, the notion advanced in the Agency's September 27, 1984, letter, that it need not comply with a valid congressional request for information, must be rejected as unsupported by any applicable precedent.

Mr. Cox. All right, sir, I would like to proceed with my comments about Ms. Gilleece and summarize the actions that we took with respect to her situation.

Mr. SIKORSKI. Go ahead, thank you.

Mr. Cox. On April 30, in response to Ms. Gilleece's request, Mr. Ream, the ethics legal specialist of the Office of Secretary of Defense, gave Ms. Gilleece general advice about the ethics standards to be followed when contacting a few contractors concerning prospective future employment.

His advice included explicit instructions to disqualify herself before negotiating with or soliciting a Government contractor for employment. He gave her a form of disqualification and advised her in accordance with Department regulations, to send the disqualifications to her superior and immediate subordinates. Mr. Ream's advice was given privately and confidentially.

On June 5, I was informed by another source—not Mr. Ream—that Ms. Gilleece was sending letters to several contractors soliciting private employment. I went to Mr. Ream who assured me that he had counseled her, and had given her disqualification instructions.

I then informed Dr. Wade, Ms. Gilleece's supervisor, who was not aware of the alleged solicitations, but after my informing him, was determined to check into the matter.

On the next day, June 6, Dr. Wade called Ms. Gilleece in and was assured that she had sought legal advice and was in compliance. He expressed to her his concern that technical compliance was not enough—that she should avoid the appearance of impropriety. He specifically required her to document her disqualifications on that day, June 6.

Over the next 2 weeks, Ms. Gilleece sent to Dr. Wade several papers concerning the disqualification data and the particular nature of her contacts with the various companies. As Dr. Wade reviewed this data he became more and more concerned during that 2-week period about the impact of the scope of the disqualifications on Ms. Gilleece's ability to perform her policy role. He shared his concern with me and I concurred.

On June 25, Dr. Wade advised Ms. Gilleece that the number and substance of Defense contractors whom she had contacted and the nature of her solicitation were incompatible with her continued service as Deputy Under Secretary for Acquisition Management.

On the next day, June 26, with the approval of the Deputy Secretary of Defense, Dr. Wade, Mr. Ream, and I met with Ms. Gilleece. We advised her of the seriousness of the situation—including assignment of an individual lawyer to counsel her—and presented her with the alternative of withdrawing immediately from pursuit of her private business venture or resigning from her policy position.

On July 2, she advised Dr. Wade that she would withdraw from pursuing her personal venture and we discussed with her and her counsel the requirement to notify each company which she had contacted of her withdrawal.

On July 3, the next day, I requested the inspector general to investigate the circumstances to determine whether any crime or actual conflict of interest had occurred.

On July 8, Dr. Wade was informed by Ms. Gilleece that she had completed notifying all of the companies of her withdrawal.

On August 2, Dr. Wade assigned Ms. Gilleece to a new position as special assistant.

On August 13, Dr. Wade received Ms. Gilleece's resignation.

On August 16, the Inspector General submitted his report which found no crime, but concluded that the Department's standards of conduct had been violated. We have concurred in that report.

In conclusion, let me assure you that the Department of Defense shares your desire to maintain the Department's integrity. But it is important that legislative action be no more sweeping than necessary. There is substantial movement of individuals within the various industry groups, even among competing organizations. The exchange of ideas and experience generally is beneficial. We often find it advantageous in our programs to bring people into the Department for limited periods to capitalize on their background and experience. Overall, we believe that the movement of individuals between Government and industry is far more beneficial to the Government than it is detrimental. And when we find real instances of corruption or actual damage, the law provides adequate remedies.

I would now be happy to answer your questions and if you have questions for others.

[The statement of Mr. Cox follows:]

STATEMENT OF

HONORABLE CHAPMAN B. COX

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

I appreciate the opportunity you have given me to address an issue that is an important concern for all of us: the standards of conduct for military and civilian employees of the Department of Defense with respect to their postgovernment employment. The movement of persons between the private sector and Government service is a major strength of our democratic system and should be encouraged in all three branches of the Government. However, the movement should occur in accordance with strict ethical standards and public accountability.

Public perception of the integrity of Government employees is significantly tarnished by media reports that, upon departure from the Department of Defense, some officers and civilians who have worked in the procurement field, accept employment with defense contractors with whom they may have dealt as DoD representatives. There is concern that such postgovernment employment may not be in the interest of the Government and may invite corrupt practices.

The leadership of the Department of Defense takes this concern very seriously. We believe that it is essential to maintain the highest standards of integrity. We pledge our support to the development and enforcement of appropriate standards and appreciate the opportunity to explore with you the problem and to report on progress to date.

Before discussing legislative proposals or specific cases, it may be helpful to review the existing rules. Our common concern relates to conduct both during and subsequent to Government employment. The propriety of employment after leaving Government service is inherently connected to the individual's conduct both before and after departing. Let me briefly summarize the rules. Four statutes relate to conduct during government service:

1. 18 U.S.C. § 203 prohibits officers and employees from receiving or seeking compensation for services rendered in connection with any particular matter in which the United States is a party or has a direct and substantial interest. This section reaches situations in which the judgment of a Government agency might be influenced by reason of payments to a Government employee.

2. 18 U.S.C. § 205 prohibits Government personnel from acting as agents for anyone else before a Government agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

57-528 O - 86 - 5

3. 18 U.S.C. § 208(a) requires executive branch personnel to refrain from personal and substantial participation as Government personnel through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any particular matter in which they, their spouses, minor children, partners or, businesses with which they are connected or are seeking employment have a financial interest.

4. 18 U.S.C. §209(a) prohibits executive branch personnel from receiving any compensation from a private source for their Government service.

Three statutes relate to employment activities after government service:

1. 18 U.S.C. §207 places the following restrictions on departing officers and employees of DoD, including military personnel:

- Permanent bar. A former Government employee may never serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding in which he or she participated "personally and substantially" while a Government employee.

- Two-year bar. For a period of two years after leaving federal service the individual may not serve as another person's representative to the Government on any particular matters which were actually pending under the former employee's "official responsibility" in his or her last year of service. This two year bar is even broader with respect to senior employees who may not even assist in such representation by personal presence.

- Senior employee, one-year bar. For one year after leaving federal service, senior employees may not represent anyone other than the United States before their former agency on any particular matter pending before or of substantial interest to, the agency.

2. 37 U.S.C. § 801(b) prohibits retired regular military officers from selling supplies or war materials to the Defense Department and related agencies for a period of three years after retirement.

3. 18 U.S.C. § 281 prohibits retired regular military officers permanently from selling to their own former military departments.

The last revision of these rules occurred in 1978 after extensive Congressional hearings. Although the employment traffic between DoD and industry was exhaustively reviewed, very few instances of actual abuse were disclosed. The resulting legislation continued to restrict certain representational activities and added the blanket 1-year "cooling off" period for senior employees. It did not prevent Government personnel from accepting employment with firms with whom they had dealt on behalf of the Government, but was focused on representational activity and actual misuse of office for personal gain.

The statutes governing standards of conduct are supplemented by a variety of regulations. Most of these are based on an Executive Order (E.O. 11222, May 8, 1965) and are implemented by regulations promulgated by the Office of Personnel Management (5 C.F.R. Part 735), the Department of Defense (32 C.F.R. Part 40), and the subordinate components of DoD.

The purpose of this regulatory program, as stated in the Executive Order, is "that employees avoid any action, whether or not specifically prohibited . . . which might result in, or create the appearance of --

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

(4) losing complete independence or impartiality of action;

(5) making a government decision outside official channels; or

(6) affecting adversely the confidence of the public in the integrity of the Government."

The Executive Order and regulations carry out the stated intent by establishing behavioral rules in a variety of areas. Among the limitations on the conduct of DoD personnel that come within the scope of this hearing are the following:

- Gratuities may not be accepted from those who have or seek business with the Department except as to items of nominal value;

- "Inside information" may not be used by DoD personnel to benefit themselves or others;

- Outside employment is prohibited if it interferes with official duties (including the duty of loyalty to the Government interest), or otherwise involves a conflict of interest;

- DoD personnel are prohibited from official dealings with former Government personnel whose participation in the transaction would violate the rules.

The regulations also require the preparation of financial disclosure reports which provide annual reminders to reporting individuals of potential conflicts between personal interests and official duties. These requirements also facilitate the enforcement of the standards of conduct.

With respect to the specific issue of postgovernment employment, there are those who are uncomfortable with the idea of any former Government officer or employee working for a firm that does business with the Government. However, Congress has consistently concluded that this is not improper in and of itself. What is improper and should be firmly prohibited is the present Government employee's use of his/her Government position or official influence (i) for personal gain, (ii) to the detriment of the Government, or (iii) in a manner which gives an unfair advantage to a private entity.

The existing law prohibits former officers and employees from such improper use of their influence or position. It was drafted by some of the best legal minds available: the Association of the Bar of the City of New York, the House

Judiciary Committee, the Department of Justice, and interested private and government lawyers. It has been tailored carefully to balance the right of the individual to try to make a living against the right of the public to be assured that official relationships will not be improperly exploited.

Some improvements on the basis of experience are possible, if narrowly drawn. But we cannot constitutionally prescribe limitations so broadly as to deprive persons of a right to employment absent some clear danger of conflict which cannot be prevented by other means. For example, we should not limit too broadly the right to employment of a military member retired after 20 years of service. Also, we cannot recruit competent, ambitious people from the private sector if the recruit is too broadly limited upon return to private life.

Some have suggested that the movement of DoD personnel into industry increases procurement costs to the Department. We have not seen evidence of this nor evidence that DoD officers or employees relax contractor requirements in order to curry favor and gain future employment. I doubt that this is a common practice or a substantial problem. On the contrary, a contractor is more likely to hire a departing DoD official who has aggressively represented the Government's interests. The assumption that contractor job offers are extended to those who "do not rock the boat" is not based on any evidence that has been made available to us and flies in the face of common sense.

Furthermore, if such cases are discovered, the law provides adequate tools to punish offenders and hold them accountable for their dishonesty.

The field of Government procurement is administered by a highly complex system of laws and regulations and the products and services procured often are very sophisticated or "state of the art." The management of this complex Government business requires skilled and talented persons. Our ability to attract such persons into Government service will suffer if there are substantial impediments to future employment. Persons with talent will shun procurement and related areas of Government service if they believe they will be unable to apply their skills and experience in future non-government employment. Such disincentive to Government service would apply to all grade levels. Not only will the most capable young individuals fail to apply for entry-level positions, but it may become even more difficult to attract skilled scientists and businessmen for senior appointee positions.

Although there is a statutory and regulatory framework to prevent Government officers and employees favoring contractors in order to gain future employment, it must be recognized that many people are uncomfortable with the present situation. In recent testimony before a subcommittee of the Senate Armed Services Committee, the Deputy Secretary of Defense expressed the view that the current law works well to address actual conflicts of

interest. He acknowledged, however, that public confidence in Government programs could be enhanced by legislation addressing some issues of appearance. If this could be done without substantially or needlessly circumscribing individual opportunities, it would be a worthwhile effort. There is also some question whether limitations on representational contacts sufficiently circumscribe postgovernment activities. Certainly there are suspicions raised when an individual moves directly from the Government's side to the contractor's side of the same project.

As you are aware, the Conference Committee on the Department of Defense Authorization Act, 1986 (S. 1160) reported out legislation containing new requirements that will materially strengthen the Department's enforcement of postgovernment standards. Although these changes will pose some additional administrative burden, they are supported by this Department. Authority available to the Secretary of Defense will permit him to implement many of the proposed changes even if the Congress does not act on these matters, although the Secretary cannot impose financial or criminal penalties without the Congressional action. Thus, the following provisions soon will be added to the Directive, either by law or by the Secretary:

-- More rigid pre-departure procedures will be imposed. Persons who discuss employment possibilities with DoD contractors will be required to consult with

57-528 O - 86 - 6

ethics officials and to file formal disqualifications from any Government business with such contractors.

-- More detailed reports will be required of former officials going to work for contractors. The reports will detail what the officials did while with DoD, their duties for the contractor, and any relationship between the two. More detailed reports also will be required of those coming into the Department from employment with contractors.

The pending legislative proposal will strengthen the enforcement procedures by imposing criminal penalties upon violators and by putting additional postemployment restrictions upon Presidential appointees.

The Department is also taking these additional steps:

- Educational procedures are being improved to ensure that all personnel are thoroughly familiar with all of the postemployment rules.

- A thorough review of enforcement procedures has revealed that the Department's ability to enforce the standards of conduct rules effectively is hampered by (i) its lack of jurisdiction over employees after they leave government service, (ii) a scarcity of resources

devoted to the enforcement effort, and (iii) the sometimes divergent priorities of the Department of Justice. We believe S.1160 will go a long way to solving the problem of jurisdiction. Our new directive contemplates the dedication of additional resources to the enforcement effort. And the Defense Fraud Unit has had substantial success in aligning the prosecution priorities of Justice with the operational priorities of Defense.

It should be noted that the matters before this Subcommittee are not limited to the Department of Defense and its personnel. They have Government-wide application. The provisions pending in the DoD Authorization Act (S.1160), however, single out persons serving with this Department. This Subcommittee may make a positive contribution by urging its members and their colleagues to apply any required remedies to the entire Government.

Before concluding my remarks, I would like to respond briefly to concerns I know you have about the Gilleece matter. I am sure you understand that, since this matter is still under investigation by the Department of Justice, it would be inappropriate for me to make direct comments about her conduct or to state conclusions concerning disposition of the investigation or allegations. However, we have been advised by Justice that it would be proper to report to you the actions taken by Department officials. This is a delicate distinction to implement, but, in

an effort to be forthcoming with the Committee, we will do our best.

On April 30, in response to Ms. Gilleece's request, Mr. Ream (the ethics legal specialist of the Office of Secretary of Defense) gave Ms. Gilleece general advice about the ethics standards to be followed when contacting "a few" contractors concerning prospective future employment. His advice included explicit instructions to disqualify herself before negotiating with or soliciting a government contractor for employment. He gave her a form of disqualification and advised her, in accordance with Department regulations, to send the disqualifications to her superior and immediate subordinates. Mr. Ream's advice was given privately (to Ms. Gilleece and Captain Mayer) and confidentially. In order to encourage our employees to seek Mr. Ream's advice, it is our policy to protect the confidentiality of such consultation.

On June 5, I was informed from another source that Ms. Gilleece was sending letters to "several" contractors soliciting private employment. I went to Mr. Ream who assured me that he had counseled her, including disqualification instructions. I then informed Dr. Wade (Ms. Gilleece's supervisor) who was not aware of the alleged solicitations but was determined to check into the matter.

On June 6, Dr. Wade called Ms. Gilleece in and was assured that she had sought legal advice and was in compliance. He expressed to her his concern that technical compliance was not enough -- that she should avoid the appearance of impropriety. He specifically required her to document her disqualifications.

Over the next two weeks, Ms. Gilleece sent to Dr. Wade several papers containing the disqualification data and the particular nature of her contacts with the various companies. As Dr. Wade reviewed this data he became more and more concerned about the impact of the scope of the disqualification on Ms. Gilleece's ability to perform a policy role. He shared his concern with me and I concurred.

On June 25, Dr. Wade advised Ms. Gilleece that the number and substance of Defense contractors whom she had contacted and the nature of her solicitation were incompatible with her continued service as Deputy Under Secretary for Acquisition Management.

On June 26, with the approval of the Deputy Secretary, Dr. Wade, Mr. Ream and I met with Ms. Gilleece. We advised her of the seriousness of the situation (including assignment of an individual lawyer to counsel her) and presented her with the alternative of withdrawing immediately from pursuit of her private business venture or resigning from her policy function.

On July 2, she advised Dr. Wade that she would withdraw from pursuing her business venture and we discussed with her and her counsel the requirement to notify each company which she had contacted of her withdrawal. On July 3, I requested the Inspector General to investigate the circumstances to determine whether any crime or actual conflict of interest had occurred.

On July 8, Dr. Wade was informed by Ms. Gilleece that she had completed notifying all of the companies of her withdrawal. On August 2, Dr. Wade assigned Ms. Gilleece to a new position as Special Assistant. On August 13, Dr. Wade received Ms. Gilleece's resignation.

On August 16, the Inspector General submitted his report which found no crime, but concluded that the Department's standards of conduct had been violated.

I believe this relates the material actions of Department officials concerning this matter. During your questions, we will do our best to answer, but we will be limited by the Justice instructions to avoid making direct comments about Ms. Gilleece's conduct or stating conclusions concerning disposition of the pending investigation.

In conclusion, let me assure you that the Department of Defense shares your desire to maintain the Department's integrity.

But it is important that legislative action be no more sweeping than necessary. There is substantial movement of individuals within the various industry groups, even among competing organizations. The exchange of ideas and experience generally is beneficial. We often find it advantageous in our programs to bring people into the Department for limited periods to capitalize on their background and experience. Overall, I believe that the movement of individuals between Government and industry is far more often beneficial to the Government than it is detrimental. And when we find real instances of corruption or actual damage, the law provides adequate remedies.

I would be happy to respond to your questions.

Mr. SIKORSKI. Thank you, Mr. Cox.

You testified in your statement that you first became aware of Ms. Gilleece's actions in attempting to establish a consulting firm for defense contractors in early June 1985; is that correct?

Mr. Cox. In my statement—that was when I was told that she was contacting several contractors, yes, sir.

Mr. SIKORSKI. Did you learn that she was contacting just a few contractors earlier?

Mr. Cox. There was a rumor that she was looking for a job that occurred earlier. And I think when I was interviewed by the IG, I told them that I had heard that rumor, yes, sir.

Mr. SIKORSKI. Was that in May, then?

Mr. Cox. Sometime in May. I don't know the precise time.

Mr. SIKORSKI. Late May, last half of May, first half of May?

Mr. Cox. I can't recall. I could provide it for the record if I went back and looked at my notes. There was that rumor which I shared with the people that needed to know it—Dr. Wade and others. But there was no specific knowledge of her contacting several employees with the solicitation that went out until June 5.

Mr. SIKORSKI. Several of the contractors with this solicitation until around June 5, and that was through all gossip?

Mr. Cox. What?

Mr. SIKORSKI. Was that through rumor?

Mr. Cox. Excuse me.

Mr. SIKORSKI. And that was through rumor that you heard about the several contractors?

Mr. Cox. That was from a specific source in the Department which I relied upon and I had confidence in their perception that this was happening.

Mr. SIKORSKI. One of your employees told you?

Mr. Cox. Yes, sir.

Mr. SIKORSKI. Who did they hear it from, a contractor?

Mr. Cox. I don't know but I believe the inspector investigated that in his investigation. I don't know if it's in his report.

Mr. SIKORSKI. You don't know how they found out? You didn't ask them, you just took the information and acted on it?

Mr. Cox. Yes, sir, I took the information and went directly to Mr. Ream and to Dr. Wade.

Mr. SIKORSKI. You were concerned because her actions——

Mr. Cox. At that point, sir, I was concerned with, No. 1, whether the disqualifications that are required under our regulations had in fact been given and; No. 2, with how broad the solicitation was because, as you know, if the solicitation was out to many contractors, then it would impair her ability to perform a policy role under our regulations. I was concerned about those two things.

Mr. SIKORSKI. You didn't know that she had sought advice from Mr. Ream at that point?

Mr. Cox. When I went to him and asked him, I asked him if she had sought advice from him, and he said yes, and that he had given her the instructions.

Mr. SIKORSKI. You went to him around the 5th of June, then?

Mr. Cox. Yes, sir.

Mr. SIKORSKI. Mr. Ream—no one informed you prior to that; is that correct?

Mr. Cox. No one——

Mr. SIKORSKI. He didn't inform you prior to that?

Mr. Cox. No, sir. No one with particular enough information that I could consider it any more than a rumor.

Mr. SIKORSKI. What's your understanding of the advice Mr. Ream gave to Ms. Gilleece?

Mr. Cox. My understanding is as I stated in my statement, that he gave the advice that he normally gives to people who are considering leaving the Department; that they should disqualify themselves before entering into any negotiations with these companies, and before soliciting employment from any company; and that the disqualification should be given to their superior and to their immediate subordinates.

Mr. SIKORSKI. You were satisfied with that advice?

Mr. Cox. At that point, yes, sir.

Mr. SIKORSKI. Even though Mr. Ream didn't know the full extent of her responsibilities and duties within the Department of Defense?

Mr. Cox. Well, I knew the full extent of her duties and I was concerned at that point as to how broad the solicitation was, and that's one of the problems that I was worried about when I went to Dr. Wade—one was whether she had disqualified; two, whether she had sent out so many solicitations that it might impact upon her ability to perform her policy role.

Mr. SIKORSKI. As I understand, Mr. Ream did not understand—was insensitive, as the IG report said—to the full nature of her responsibilities.

Mr. Cox. I can tell you what I know about that and it may be better for you to ask Mr. Ream—and if you want to bring him up now, that's fine. I have talked to Mr. Ream since then, and my un-

derstanding is that he didn't know the full nature of her responsibilities but he did know that she was a policy-oriented official in the acquisition part of the business.

Mr. SIKORSKI. It raises the concern as to how you can be satisfied with the advice when you don't have the basis which raises the issue of documentation that the IG spoke of in favor of in the report and testified to here today.

As I understand it, from now on your ethics counselors will be writing a memorandum stating the facts and the advice. Is that correct?

Mr. Cox. I would like to state it a little bit differently, and if you have a question about it, then, fine.

What I see has happened here is a difference of view as to what the advice really was. The inspector general's frustration is that you have two people giving different reports of the same conference. I think you are always going to have that in a situation—there's a possibility for that. And the inspector general has proposed that it would be better if there be a memorandum written that sets out everything that occurred in the interview.

We agree that there should be some memorialization of every interview we have. The problem is that there are many kinds of interviews that occur—people ask a question in the hall; people come in and sit down and take a long time dealing with a particular case; sometimes people will write a memorandum that asks particular questions and ask for a particular answer of the Department's view. And through that whole spectrum of kinds of advice, we try our best to document it. We have a check list which we will now require the interviewees to initial, to make sure that they have seen everything that their ethics counselor believes he has advised them on, and give them an opportunity to even add comments of their own, and give the ethics counselor an opportunity to write his own comments on the check list that they can see before they initial it.

Mr. SIKORSKI. I thought the deputy inspector general testified that ethics counselors from now on are going to be doing a memorandum?

Mr. Cox. Yes; sir, they will.

Mr. SIKORSKI. And as part of that, there's going to be an attachment or it is this check list?

Mr. Cox. This check list will be used to write on at the time of the interview and the person will have to initial off on it before they leave the interview.

Mr. SIKORSKI. It will state the facts, inquiry, and the kind of advice?

Mr. Cox. Yes, sir.

Mr. SIKORSKI. You said in your statement that after speaking with Mr. Ream and Dr. Wade you were not concerned until near the end of June; is that correct?

Mr. Cox. I don't think I said that in my statement. I said that after Dr. Wade talked to her, he told her that he was not only concerned about technical compliance, which was asserted in that meeting; namely, that she may not have started negotiations yet, or so forth. He said that he was concerned about the appearance of impropriety and he wanted her to document the disqualifications

immediately. It was over the next 2 weeks that she sent him several papers. She sent him three or four, as I recall, different memoranda telling him of the times that she had disqualified herself from various companies and giving him the letters and copies of things that she had done.

And as those documents came to him over those next 2 weeks, he became more and more concerned about the scope of her endeavor and how it impacted upon her ability to perform her policy role.

Mr. SIKORSKI. Let me get this clarified here.

You talked to Wade on the fifth?

Mr. COX. Yes, sir.

Mr. SIKORSKI. Wade talked to her on the sixth.

Mr. COX. Yes.

Mr. SIKORSKI. During the time she was providing him with all these disqualification forms, she was sending out more solicitations.

Mr. COX. I don't know exactly the dates. I think those dates are all revealed by the inspector general's report. I think during that time there were some more that were going out. We didn't know precisely which ones were getting the letters until we got the disqualification from her.

Mr. SIKORSKI. The point, Mr. Cox, is, you raised this alarm and, according to you, Dr. Wade called Ms. Gilleece in and was assured that she had sought legal advice and was in compliance. He expressed to her his concern that technical compliance was not enough, that she should avoid the appearance of impropriety. He specifically required her to document her disqualification, and over the next 2 weeks, Ms. Gilleece sent to Dr. Wade several papers containing the disqualification data and the particular nature of her contacts with the various companies.

This all reads as though it is past tense. The truth of the matter is at the same time your analysis of the facts is going on, she was sending out more and more solicitations.

Mr. COX. I think the facts may show that; yes, sir. When we found this out, and found out the total scope of it, Dr. Wade shared his concern with me—because she was talking to him, she was not talking to me—he shared his concern with me. I concurred in that concern. On the 25th of June, he called her in and said, this is inconsistent with your continuing to serve in your policy role.

Mr. SIKORSKI. Because, as you say, there were so many of these companies.

Mr. COX. So many of the companies, plus——

Mr. SIKORSKI. Now, the 2 weeks between when she talked to him and the time he called her in—in fact, the almost 3 weeks—she was soliciting more and more companies.

Mr. COX. I think that's true.

Mr. SIKORSKI. It hardly makes one feel good about the concern that was communicated, and it puts a somewhat skeptical light on your testimony of the facts.

Mr. COX. I am testifying to the facts as best I can, sir, under oath.

Mr. SIKORSKI. You didn't mention the fact that she was soliciting people during this time as well.

Mr. Cox. I didn't know that until she advised Dr. Wade of that. And as soon as he found out about it, he shared his concern with me.

Mr. SIKORSKI. You knew it before you came here this morning, or this afternoon?

Mr. Cox. Yes, sir.

Mr. SIKORSKI. But it's missing from your statement.

Mr. Cox. I am testifying, sir, as to what we did.

I understand that Ms. Gilleece may have been doing other things at the time we were taking the action that we thought was appropriate.

Mr. SIKORSKI. You understand more than that. She was giving you documentation of her disqualifications and the nature of her contacts with the various companies. At the same time she was giving you this, she was sending our solicitations. So these disqualifications start building up along with these solicitations all during this time.

Mr. Cox. And that's what caused our concern.

Mr. SIKORSKI. You left it out of your testimony.

Mr. Cox. I'm sorry, I thought I mentioned that in the paragraph that dealt with that 2-week period. But as this information came in us, Dr. Wade became more and more concerned about it, as it built up.

Mr. SIKORSKI. Over the next 2 weeks, Ms. Gilleece sent Dr. Wade several papers containing the disqualification data and the particular nature of her contacts with the various companies. At the same time, she was soliciting more and more companies and providing that information to Dr. Wade is what happened.

It took you a couple of months to get around to reviewing those documents then to find out that you might have a serious problem?

Mr. Cox. No, sir.

Mr. SIKORSKI. Well, you knew it in May. You raised the flag on June 5 with her supervisor.

Mr. Cox. I knew it, sir, from a source I relied on, on June the 5th.

Mr. SIKORSKI. You heard rumors that she was putting out feelers.

Mr. Cox. That she was looking for a job, yes, sir. I probably hear a rumor like that once a week.

Mr. SIKORSKI. And you don't do anything about it until it becomes something more?

Mr. Cox. I make sure that our policy functions in the Department adequately provide advice to people and that supervisors know what the rules are. It's not my function to chase down every rumor.

Mr. SIKORSKI. Why didn't you tell her, or tell Dr. Wade to tell her to stop her actions until you could review it and see what she's got, and what's happening?

Mr. Cox. In my judgment it wasn't called for at that time.

Mr. SIKORSKI. What did you know in order to make that judgment call?

Mr. Cox. I knew that Mr. Ream had given her advice—that normally is very effective with respect to our officials—to disqualify herself, and that if she followed that advice and gave her supervisor prior notice before soliciting people, the supervisor would learn

of that and would be in a position to take some action if it was getting out of hand. And that's normally what happens

Mr. SIKORSKI. It was getting out of hand while you were undertaking this review of whether it was getting out of hand.

Mr. COX. Yes, sir, it was, because she was not giving us prior notification, as our regulations require.

Mr. SIKORSKI. Prior notification of contact.

Mr. COX. Of the solicitations.

Mr. SIKORSKI. Did Dr. Wade tell her she had to provide prior notification?

Mr. COX. He told her that she had to immediately document the notifications when he first talked to her.

Mr. SIKORSKI. On previous contractors that had already been solicited. Did he tell her he wanted prior notification of any additional solicitations?

Mr. COX. I think so, but you would have to ask him directly that, sir.

Mr. SIKORSKI. Dr. Wade.

Dr. WADE. Yes, sir.

Mr. SIKORSKI. Did you tell her at the June 6 meeting to give you prior notification before she solicited any more contractors?

Dr. WADE. Let me back up for a minute, Mr. Chairman, and cover this time period.

Mr. SIKORSKI. Just don't forget my question.

Dr. WADE. I certainly will not.

Mr. SIKORSKI. OK.

Dr. WADE. Back in the time period of January of this year, there was an announcement of a decision to reorganize the Office of the Secretary of Defense, in which the new Office of Acquisition and Logistics would be formed. It was clear in the content of that new office that the current position of the Deputy Under Secretary of Defense for Acquisition Management would be abolished. Therefore, in looking toward the time when the new office would be in effect, the current position that was then occupied by Ms. Gilleece would be abolished.

Now, as Mr. Cox has mentioned this morning, about the early part of June, that he heard some comments in reference to some activity that Ms. Gilleece was undertaking vis-a-vis possible employment outside of the Government and I knew at that time that she felt that she had in effect been forced into two options: One option was either a demotion, the other, to leave the Government.

I called her in at that time and asked her what the facts were and what she was up to. She, at that time, told me that she was in effect in the process of or having sent letters out to contractors, to industry, soliciting either their advice or their interest in her forming up a consulting firm.

She told me that she had spent time going through her plans in detail with the Office of Ethics as to whether this was a legitimate process. She told me that she was given a green light in that regard. I felt at that time that irrespective of whether it was in technical compliance, that that whole process was potentially devastating in the context of the functioning of the office, and the perception as seen by the American people. I asked her at that time to immediately disqualify herself from, in the sense of placing on

record, her activities vis-a-vis those firms. She left the office in that light.

At that time, based on the comment that I made to her, that this type of activity was just wrong in the context of her job, I presumed that she understood that such future activity of this kind was really not in accord with the functioning of the office. So I think in that context I am answering your question.

I might also say that as these letters came in to me, as Mr. Cox indicated, that I believed this problem had reached the high point during the month of June, and that either she had to cease and terminate the activity, or she had to give up her current job. She was given that instruction during the latter part of June.

Mr. SIKORSKI. At the end of July, the New York Times says that the prior week in a news conference you said you believed Ms. Gilleece had done nothing improper.

Dr. WADE. No, sir. What I did say during my news conference, which was in early July, shortly after my assuming this new position, was that No. 1, Ms. Gilleece had done a good job over the past several years in the context of being the Deputy Under Secretary of Defense for Acquisition Management. No. 2, that she was in technical compliance with the rules for this type of activity, and, No. 3, she was in the process of removing herself from the Government and I wanted to see that process continue.

Mr. SIKORSKI. The truth is she wasn't in technical compliance.

Dr. WADE. The input that she was given——

Mr. SIKORSKI. That you knew about.

Dr. WADE. That I knew about at that time, she was in technical compliance, yes, sir.

Mr. SIKORSKI. But the fact is that the inspector general found that she was not in compliance—in fact, that she was violating the Standards of Conduct.

Dr. WADE. As far as the laws of the land were concerned, Mr. Chairman, it was my——

Mr. SIKORSKI. I am talking about the standards of DOD, I don't know if you consider those laws of the land or what, but as far as the Standards of Conduct of the DOD concerning conflicts-of-interest issues, she was not in compliance.

Dr. WADE. At that time, with the input that I had both from the counsel's office and from her, I made the factual judgment based on what I knew, which was that she was in compliance with the law.

Mr. SIKORSKI. How about the week before July 26?

Dr. WADE. When we were called during the latter part of June, I asked her to either cease and desist her business arrangements or immediately terminate her position as far as being Deputy Under Secretary, so that was quite clear.

Mr. SIKORSKI. But you just said that at your press conference you said she was in technical compliance.

Dr. WADE. At that time my position was that she was in technical compliance but as far as the overall functioning of the office and the outside perception of the problem, I had reached the position that I would terminate her because of the overall impact on the office.

Mr. SIKORSKI. You shifted her over almost a month earlier, June 25.

Dr. WADE. Sir.

Mr. SIKORSKI. You shifted her over to a special assistant position.

Dr. WADE. No, I think that was in the latter part of July.

Mr. SIKORSKI. OK.

Dr. WADE. Let me give you that date. August 2.

Mr. SIKORSKI. August 2.

Dr. WADE. Yes, sir.

Mr. SIKORSKI. So your answer to my question is, you thought it was sufficient based on what you knew on June 6, that you thought her advice from the ethics counselor was appropriate and you did not tell her not to send out any more solicitations; is that correct?

Dr. WADE. After she told me she had gone through in detail her activity with counsel, and that both she and the counsel agreed that she was in compliance with the regulations, I told her that there was a perception problem, and in my opinion as a manager her actions were inappropriate and, therefore, she needed to immediately disqualify herself from all that activity.

Mr. SIKORSKI. But you didn't tell her to stop soliciting?

Dr. WADE. I made the assumption that when I said it was poor judgment, that that automatically followed, Mr. Chairman. I didn't think I needed to say that.

Mr. SIKORSKI. And you didn't go beyond that and say, "If you are soliciting, you better get prior notification to us?"

Dr. WADE. I think if you heard from your boss that you had better have disqualification letters coming in immediately you would presume that the activity was not in accord with the regulations and, therefore, it ought to cease.

Mr. SIKORSKI. I would like to agree with you but in the following couple of weeks you kept getting these disqualification forms showing contacts made during that time period.

Dr. WADE. It wasn't clear from reading the letters what was going on, but I must say, within 2 weeks——

Mr. SIKORSKI. She gave you some numbers, didn't she?

Dr. WADE. Yes, sir, and the letter indicated——

Mr. SIKORSKI. And the numbers were growing, weren't they?

Dr. WADE. The numbers were growing, and that's why I came to the decision that she couldn't stay in that job.

Mr. SIKORSKI. But you still thought she was in technical compliance and you told the world and the American public that she was a valued member of your staff and that she hadn't done anything improper.

Dr. WADE. That was also the input——

Mr. COX. Sir, there's one——

Mr. SIKORSKI. Let him finish.

Dr. WADE. That was the input I was given by counsel.

Mr. SIKORSKI. You want to come and tell us that you were concerned and took action and it was reasonable and the rest of it. At the same time, what you told the American public during this time doesn't meet with that and the facts don't assure that that exactly was happening either.

Dr. WADE. I think there's another part here, Mr. Chairman; on July 5, we should note for the record, she had ceased her formal

activity in soliciting clients on the outside and, therefore, she was then engaged, correctly so, in the conduct of her job.

I would also note here at that time the new office had been organized, and was in the process of being assembled. The position of the Deputy Under Secretary of Defense for Acquisition Management was in the process of being formally abolished.

So, from the facts, as you are indicating here, and the fact that she no longer was soliciting interest from outside firms. She had complied with the process that was put in front of her, and she was, in my opinion, in the process of doing those kinds of things to leave the Government.

Mr. SIKORSKI. The truth is that you got stuff into your office during that June period showing that she was not in compliance. It was her disqualification statements—more and more defense contractors, which means she was soliciting and disqualifying with no prenotification all during that time period.

Dr. WADE. The letters that I got from her at that time, Mr. Chairman, during the first meeting with her, did not have any indication of just how large this operation was in the sense of her interest with outside firms.

Mr. SIKORSKI. You just told us that you felt very comfortable that she was in compliance. Now you are telling us you didn't know the numbers.

Dr. WADE. I said I was very comfortable that she was in compliance with the technical laws that were on the books. As I said before, the perception was——

Mr. SIKORSKI. How did you know that? What made you feel comfortable?

Dr. WADE. First of all, she told me that she had seen the counsel, that she had sat down and gone through the problem with him, and that the counsel had informed her, that she was in compliance. I had talked to Mr. Cox within the next day so I felt that I was on firm ground in that sense. But the most important point here was that I came to the conclusion that there was a real serious problem on perception.

Mr. SIKORSKI. At that point. And then she went about soliciting without any prenotification, and sent you disqualifying letters documenting that resolicitation. Isn't that what happened?

Dr. WADE. I might just say, that during that same time period, the month of June, that I called her in and told her that vis-a-vis the time that I had a meeting with her June 5, that I considered that now she ought to consider ceasing that activity, and she could remain in the Government.

Mr. SIKORSKI. You said there was a perception problem.

Dr. WADE. Yes, sir.

Mr. SIKORSKI. The appearance of a conflict?

Dr. WADE. Yes, sir. And in my opinion, that is just as important in the context of the function of the office.

Mr. SIKORSKI. The fact of the matter is, it is in fact a violation of the standards of conduct to go over the line of appearance; isn't that correct?

Dr. WADE. That was the founding of the IG, yes, sir, and I have to agree with it after the fact. But as of then, I was working on the input that I was being given.

Mr. SIKORSKI. You told her there was a perception problem and if you had your druthers, you would have had her stop immediately, on June 6?

Dr. WADE. Yes, sir.

Mr. SIKORSKI. But then you told the public that she was in technical compliance with the conflict-of-interest standards.

Dr. WADE. Yes, sir, because she had formally withdrawn from that activity.

Mr. SIKORSKI. But appearance of conflict of interest is a violation of those standards.

Dr. WADE. We are looking back, Mr. Chairman——

Mr. SIKORSKI. No, we are not. You told me you talked to her on June 6 and told her she had a perception problem.

Dr. WADE. Absolutely.

Mr. SIKORSKI. There was a perception, an appearance of a conflict of interest. That's a standard. When you told the American public that she was in technical compliance with the Standards of Conduct, you were wrong. You, yourself, admit that there was a perception of——

Dr. WADE. No; I said that she was in technical compliance with the law of the land, Mr. Chairman.

Mr. SIKORSKI. But Standards of Conduct are the law of the land, are they not? Do they not have the force and effect of the law?

Dr. WADE. Yes, sir.

Mr. SIKORSKI. OK. There's a standard in there that says you have to avoid the appearance of a conflict of interest; is there not?

Dr. WADE. My judgment was that I was going beyond what I would call technical compliance in the sense of my operation of the office.

Mr. SIKORSKI. You testified that you believed, and you told her so on June 6, that there was a perception that she had a conflict of interest.

Dr. WADE. That's right.

Mr. SIKORSKI. That is a violation of the standards——

Dr. WADE. But I was also told, Mr. Chairman, by the ethics counsel, that she was in compliance in the sense of her activity. So I went further than what I consider to be——

Mr. SIKORSKI. On June 6 you talked with Mr. Ream?

Dr. WADE. I talked with either Mr. Ream or Mr. Cox on or about June 5, either right after the meeting or before.

Mr. SIKORSKI. The ethics counselor told you she was in compliance?

Dr. WADE. Either he did or Mr. Cox—I forgot, because I talked to both of them.

Mr. SIKORSKI. Mr. Cox, did you tell him she was in compliance?

Mr. COX. I told him that with respect to the information at that time that was available to us, that if she disqualified herself—and we were careful that she did not engage in any particular matter relating to those companies in which she had this interest—that she would be in compliance.

Mr. SIKORSKI. What happened to the prenotification requirement?

Mr. COX. That's what I meant, if she disqualified herself. Now, when we started getting these things——

Mr. SIKORSKI. To disqualify, aren't you supposed to notify before you solicit?

Mr. COX. That's right.

Mr. SIKORSKI. She hadn't done that?

Mr. COX. And that—she did not do that.

Mr. SIKORSKI. How could she, therefore, be in compliance? How could you then assure Dr. Wade, who then assured the American public, that she was in compliance?

Mr. COX. I don't remember his exact statement to the American public, but at the time he had his press conference, at that time she was in compliance, because she had withdrawn———

Mr. SIKORSKI. Hadn't she violated the prenotification standard?

Mr. COX. What had she violated?

Mr. SIKORSKI. Mr. Cox, hadn't she violated the prenotification requirement?

Mr. COX. She did not notify Mr. Wade in advance.

Mr. SIKORSKI. Isn't that a violation?

Mr. COX. That is a minor violation; yes, sir.

Mr. SIKORSKI. It's a minor violation?

Mr. COX. I don't think it creates an actual conflict.

Mr. SIKORSKI. OK.

So, it's your informed judgment that there is a violation, but it was only minor, not rising to a real conflict? It's Dr. Wade's opinion that she had created a perception problem that there was an appearance of a conflict of interest. But no one tells her to do anything about stopping———

Mr. COX. I agreed with Dr. Wade with respect to the perception problem and with respect to the major, what I would say a major violation of our standards———

Mr. SIKORSKI. So, you had two violations of the Standards of Conduct. One, a minor one in your estimation, that she didn't prenotify, and, of course, she didn't prenotify all during this time period in June either. And, second, that there was an appearance of a conflict of interest. Yet, the American public was being told she is a valued member of the team, she is in technical compliance, she had done nothing improper.

Mr. COX. We have got two levels of concern here, sir. One, is the criminal statute; the other is our regulations. I do not believe that she ever committed a crime. I don't think the inspector general does, and that's still under———

Mr. SIKORSKI. Mr. Cox, I think you just gave me a conclusion with regards to the investigation that's undergoing.

Mr. COX. I withdraw that.

The point is that that is a matter that's still under investigation. I agree—I should not make a comment about that.

Mr. SIKORSKI. That's a bunch of baloney. You tried to use the Department of Justice, as so many have before you, to somehow shield you from discussing this matter openly and forthrightly. I think perhaps for the first time. I have no trouble with your stating your opinions with regard to anything. You certainly have stated them and Dr. Wade has stated them in the press repeatedly on this issue. I don't accept their position with regard to it or your position with regard to that statement.

Mr. COX. I think you———

Mr. SIKORSKI. I just want you to know that it appears that you are using the Department of Justice, as others have tried, without merit, in the past.

Mr. COX. I disagree with you on that. I don't think it's proper for me to state a conclusion about whether or not she committed a crime, and I did that, and it was an inadvertence which I should not have done.

But there is the level of the criminal offense. That's something that still has not been adequately addressed, and is being addressed.

The other level is whether or not she violated our regulations, which are not criminal violations but matters which we need to take action on if they occur.

Mr. SIKORSKI. The fact is that standards of conduct are the law of the land. There is an Executive order promulgated in the 1960's; your Standards of Conduct have the force and effect of controlling the behavior of your employees—several Federal employees have been dismissed for violation of those standards. Those dismissals have been upheld by the courts as well as the Merit Systems Protection Board and all the other civil service avenues available to them.

In this instance you have got two violations, but at the same time the public was being told differently.

Dr. Wade, did Ms. Gilleece tell you she disqualified herself from any activities involving these contractors?

Dr. WADE. She gave me notification when she—you mean the first time on June 5—she had not disqualified herself.

Mr. SIKORSKI. Right.

Dr. WADE. And that's what I directed to be done if——

Mr. SIKORSKI. She had not notified you that she was going to solicit?

Dr. WADE. That was a fact-finding meeting at that time, Mr. Chairman.

Mr. SIKORSKI. Yes, I understand that.

You knew she hadn't notified you because you hadn't heard until Mr. Cox——

Dr. WADE. No, I called her in to find out what was going on.

Mr. SIKORSKI. OK.

You knew she hadn't notified you before she solicited. You knew she hadn't disqualified because that disqualification goes to you—and that's the advice of Mr. Ream.

So we have the instance of Mr. Cox relying on Mr. Ream's advice to Ms. Gilleece. We have you relying on Mr. Ream's advice to Ms. Gilleece. But you knew that she was soliciting and had not disqualified herself, which means the advice wasn't working. Am I wrong?

Dr. WADE. What I told her to do was irrespective——

Mr. SIKORSKI. Wait a minute. That should have alerted you to the fact she wasn't following Mr. Ream's advice. Isn't that correct? Mr. Cox or Dr. Wade?

Mr. COX. It was clear when we got the information from her as to when she did these various things that she had not given prior notification to Dr. Wade, yes.

Mr. SIKORSKI. Dr. Wade found that out June 6.

Mr. COX. Yes, sir, and he demanded that she document it immediately.

Mr. SIKORSKI. So you knew then that this advice wasn't working?

Dr. WADE. Pardon me?

Mr. SIKORSKI. You knew then that Mr. Ream's advice wasn't working?

Dr. WADE. My position at the time was that I had to assume, after knowing she and Mr. Ream had met that she had a green light from the ethics counselor as to what she should do. I made my own personal assessment that irrespective of what technical compliance told her to do, that I considered as far as my functioning and my job was concerned, and the overall responsibility of running the office, that I wanted her to disqualify herself irrespective of the technical compliance and the guidance that she was given. I think that's the key point here.

At no time during the month of June was there any further guidance in the sense that she was not in compliance, and I made the decision by the end of the month that either she had to terminate that operation or I would terminate her as far as that job was concerned.

Mr. SIKORSKI. You knew she wasn't in compliance during the month of June and all during that time she was sending you more and more disqualifications. So if that fact-finding meeting on the sixth told you who she had already contacted, you now are getting disqualification forms for a whole batch of defense contractors without prior notification or prior disqualification .

Let me ask Mr. Ream to come up here. You seem to be the person in the middle of all this, and maybe you can help us shed some additional light on how a case like this could get as far as it did. Evidently there had been reforms already undertaken.

How long have you been ethics counselor?

Mr. REAM. I have been doing this work in my present office since late 1976.

Mr. SIKORSKI. And you had done it on and off prior to 1976?

Mr. REAM. Yes, sir. I was a military lawyer from 1962, and one of my first assignments as a lawyer was doing this kind of work. So intermittently, between then and 1976, when it became my principal function, I worked in this area.

Mr. SIKORSKI. It shouldn't be unfair to say that you have extensive experience in this area of the Government's standards of conduct. At least, if you don't have it, you shouldn't be in your position, I guess.

Mr. REAM. It's true that I spent a lot of time on it.

Mr. SIKORSKI. The more you spend on it, the more difficult the area has to be, I would guess.

Mr. REAM. That's true. Some of these standards, such as the standard of appearance, are very illusive. I have a hard time with those.

Mr. SIKORSKI. You certainly believe it's important from a perspective of public policy to avoid conflicts of interest; don't you?

Mr. REAM. Yes, sir.

Mr. SIKORSKI. You also believe that Government personnel should avoid any action which might create the appearance of a conflict of interest?

Mr. REAM. Absolutely.

Mr. SIKORSKI. That's important because we ask our people to buy into the Government that operates on their benefit, and to the extent that something looks wrong, they don't buy into that Government. That's my analysis of the appearance standard. Do you have one you want to share with us?

Mr. REAM. I would agree with that, Mr. Chairman.

Mr. SIKORSKI. Wouldn't you have to say, then, that at the very least her actions suggested the appearance of a conflict of interest now that you look back?

Mr. REAM. I agree with that.

Mr. SIKORSKI. Do you disagree with the inspector general's report on the matter dealing with her conduct?

Mr. REAM. I agree with their analysis that there is an appearance problem, yes, sir.

Mr. SIKORSKI. Did you know her duties and responsibilities when you talked with her—what was it, April 30?

Mr. REAM. When I met with her on April 30, I knew what her title was, and that generally she had a responsible position in procurement. But usually in meetings like that I don't ask for the details of the job. I give summaries of the rules and answer questions. I view my role as explaining the rules. I am not giving individual legal assistance to people or telling them what to do, so I don't draw them out on what their plans are or precisely what the nature of their duties are.

Mr. SIKORSKI. But she took her meeting with you and the fact that you had given her advice, and used what she termed your advice as a rationalization for what she later did, saying it was all right based on her ethics counselor's advice. That wasn't right from your perspective; is that correct?

Mr. REAM. Now there's several differences in our recollections of what occurred at that meeting.

Mr. SIKORSKI. You hesitate to get too far into the facts of a particular situation so that you become a lawyer, a Department lawyer, but all of a sudden a lawyer for a particular individual employee. Is that the problem you have?

Mr. REAM. That's right. I am explaining the rules to them but not guiding them on their personal financial plans.

Mr. SIKORSKI. But at the same time, you can't give advice without understanding their responsibilities and duties and plans.

Mr. REAM. To give them advice to the extent that I say, for example, you must disqualify yourself before beginning negotiations with anybody that you may have dealings with in your official duties doesn't require me to know what their official duties are. I leave that up to them. They would presumably apply that on the basis of their own knowledge of what their job is. They, of course, are free to ask further questions on that if the advice, the general advice, is not clear.

Mr. SIKORSKI. Do you think that documenting your advice would be a useful tool for many reasons?

Mr. REAM. It would help me at a time like this, but it would certainly impede my ability to respond to the numbers of people that we get questions from.

Mr. SIKORSKI. It would certainly impede the ability of the person that came in and talked to you to go out and say that the ethics counselor gave them a clean bill of health.

Mr. REAM. That's true too.

Mr. SIKORSKI. And that's what this check list system is going to prevent, isn't it?

Mr. REAM. That's right.

Mr. SIKORSKI. We have one more witness and we have a few more questions, just a few more questions. If I promise, with regard to something that's on the floor, to have a very short meeting, we will take a 10-minute break and come back here at 1:30 and continue this. We hope to be done with you just a few minutes after that, and then finish with this hearing by 2 o'clock.

[Recess.]

Mr. SIKORSKI. Let's come back to order.

Mr. Ream, during the IG's investigation you testified that "Ms. Gilleece's duties primarily concerned setting policy and rarely involved specific matters related to the interest of an individual firm." And that's a quotation from the IG report, page 2.

You informed Ms. Gilleece, therefore, that she could recuse or disqualify herself from any specific matter related to the firms she contacted. Is that a fair analysis of what you told the IG?

Mr. REAM. That may be a fair analysis of what she told the IG. I am not sure that I would have stated it that way.

Mr. SIKORSKI. You have been here today through this long hearing, and we thank you all for bearing with us. You have heard the discussion about this recusal or disqualification matter as it relates to a policymaker who is making recommendations, involved in rulemaking?

Mr. REAM. Yes, sir.

Mr. SIKORSKI. Setting policy that affects all defense contractors, or at least a larger group of defense contractors and doesn't involve specific negotiation on a contract. How could she disqualify herself from involvement with Magnavox, for example?

Mr. REAM. It's my understanding that on the standard that we have applied, a person would have a possibly disqualifying financial interest if any of their actions would have a direct or predictable impact upon the person that they were negotiating with. We have generally understood that to not include the general policy role but specific cases—what we call as particular matters.

Mr. SIKORSKI. How about if she owned stock in Magnavox?

Mr. REAM. You are asking if we would allow her, or we would find that acceptable?

Mr. SIKORSKI. Yes.

Mr. REAM. We would recommend that she divest herself of that in the nature of her duties.

Mr. SIKORSKI. So in effect she would do ad hoc disqualification. She would eliminate the potential conflict, is that right?

Mr. REAM. Well, usually with a job negotiation that may be a very brief period of time, days or weeks, where a person would be limited in the performance of their duties, so they could disqualify themselves for that period and still be effective in the balance of the responsibilities.

Mr. SIKORSKI. Close it off one way or another similar to the case underpinning the decision with regard to the negotiation issue. Can you say that the work measurement issue that's been talked about that she participated in during the pendency of her solicitations is not a particular matter affecting all defense contractors and affecting the specific contractors that she had solicitations out at?

Mr. REAM. I don't know much about the details of that case other than what I have heard today. But as I have understood the standards, that where there's a general policy responsibility that that would not be disqualifying even though it could conceivably have an impact upon some of these contractors.

Mr. SIKORSKI. She, herself, wrote a memo saying it was going to cost defense contractors millions.

Mr. REAM. Well, that's right, and this is a difficult issue but it's one that I have understood that we distinguish between those who have a particular interest that may directly impact upon an identifiable segment of the industry and those that may hit all taxpayers or all defense contractors generally.

Mr. SIKORSKI. Doesn't rulemaking include a particular matter?

Mr. REAM. It may in some cases and, as I say, it's a hard place to draw a line.

Mr. SIKORSKI. It needs clarification, it would help you.

Mr. REAM. We would be benefited by it, that's right.

Mr. SIKORSKI. Gentlemen, do you have any objection to the idea that the issue of negotiation and the issue of a particular matter need some clarification to assist you in this area of conflicts of interest?

Mr. COX. I don't have any objections, sir. I think it will always be a very thorny issue. It was when they drafted the legislation back in the late 1970's. And it was very carefully dealt with and a lot of the best legal minds in the country struggled with it. But if we could get some improvement in the clarification, of course, we would be benefited.

Mr. SIKORSKI. I promised you I would get you out within 5 or 10 minutes. We will leave the record open to receive additional information as needed.

I thank you three gentlemen for your coming today and sitting through a lengthy hearing. It is an important issue, bothersome to you as well as to the American people. Again, I want to thank you.

We will recess for the vote and come back within 15 minutes for the final witness.

Mr. COX. Thank you.

[Recess.]

Mr. SIKORSKI. Let's come to order.

Our next and final witness today is Jeffrey Rohm. We are cognizant, Mr. Rohm, of your transportation demands.

You are a former Air Force officer, responsible for overseeing all Pratt-Whitney contracts in West Palm Beach, FL, is that correct?

Mr. ROHM. Partially correct. I also advise the Air Force plant representative office in East Hartford, CT, too.

Mr. SIKORSKI. In East Hartford, CT?

Mr. ROHM. Yes, West Palm Beach and East Hartford, CT.

Mr. SIKORSKI. Do you have any objection to appearing without counsel?

Mr. ROHM. No.
Mr. SIKORSKI. Do you have any objection to being sworn in?
Mr. ROHM. No, I don't.
Mr. SIKORSKI. If not, raise your right hand.
[Witness sworn.]
Mr. SIKORSKI. Thank you.

I want to give you the subcommittee's appreciation and that of the entire Congress for your willingness to assist us as we review conflicts-of-interest problems and how programs are working and make recommendations as to changes as needed.

I want to really commend you for doing what we always hope will be the case, and that is, after you have left a job to come back and assist in making better public policy, and for that we are very appreciative.

Do you have a statement you would like to begin with?

TESTIMONY OF JEFFREY ROHM, AUSTIN, TX

Mr. ROHM. Yes; sir, I do. I have some prepared notes.

First of all, I would like to thank you for the opportunity to testify today. Conflict-of-interest legislation is something that has been of great concern to me and something I feel with deep conscience.

To give you a little bit about my background, I have not been at a headquarters level such as Mr. Wade or Mr. Cox but I do think that I can lend something of the perspectives of the field.

I was stationed at an intermediate headquarters in the Air Force Contract Management Division as a staff judge advocate, a legal adviser on complex Government contract issues. Subsequently, I was assigned to an Air Force representative office in West Palm Beach, FL, in the facilities of Pratt & Whitney Aircraft.

I was the adviser for the Air Force plant representative office in West Palm Beach, and also the AFPRO in East Hartford, CT that surveilled Pratt & Whitney's manufacturing processes. Approximately 280 Government employees were at these offices. The particular contractor did about $4 billion worth of business with the Department of Defense.

In 1983, I left the Air Force and I joined the contract section of a subsidiary of TRW. In December 1984, I left TRW and I joined Tracor in Austin, TX. They are a contractor with some defense business and some commercial business. My current position is assistant general counsel there.

I come to you not as a representative of the Air Force or any of the contractors I have associated with, nor in my capacity as an Air Force Reserve officer, but I come to you as a private citizen today.

In November 1981, I submitted a suggestion. The gist of that suggestion was to prohibit key Government personnel surveilling a contractor from accepting employment with that contractor. The purpose of that suggestion was to eliminate a gap that I perceived in law and regulations that I felt undermined integrity of the existing rules that Air Force personnel had to live by and also public confidence.

To just depart from my notes for just a moment, I would like to go to page 8 of the statement made by Mr. Cox. I think this par-

ticular statement puts much of what I have to say in perspective today.

In referring to the bottom paragraph, he is talking about post-DOD employment, it says:

> Some have suggested that the movement of DOD personnel into industry increases procurement costs to the Department. We have not seen evidence of this nor evidence that DOD officers or employees relax contractor requirements in order to curry favor and gain future employment. I doubt that this is a common practice or a substantial problem. On the contrary, a contractor is more likely to hire a departing DOD official who has aggressively represented the government's interests. The assumption that contractor job offers are extended to those who "do not rock the boat" is not based on any evidence that has been made available to us and flies in the face of common sense.

A couple of points about this statement. First of all, I think it misses the underlying basis for conflict-of-interest regulations. The current conflict-of-interest regulations spend a great deal of time addressing gratuities, particularly acceptance of gratuities by Government employees.

This is really for two reasons: Acceptance of gratuities are prohibited because its felt that it would lead to the perception by the public of appearance of impropriety or that the gratuities would tend to influence the conduct of the DOD official. The level to which this rule has been applied is extremely fine. For example, Government employees cannot accept from contractors coffee or doughnuts. Now, I think that in light of the rule against acceptance of gratuities, this statement is preposterous. Essentially what it's saying is that under the current regulations, Government employees cannot accept coffee or doughnuts but they can accept jobs from a contractor, and this will not affect their judgment or integrity. I think this flies in the face of commonsense.

Let me tell you about my experience at the AFPRO. I had to lecture on Government conflict-of-interest regulations to our employees semiannually. I found that our Government employees were extremely cynical when I had to tell them that they could not accept even minor gratuities, and yet they saw their coworkers and other DOD officials accepting jobs with the contractors that they were directly surveilling. When you are in AFPRO you are on the front line, and the temptations, the influences of a contractor, are overwhelming.

I think the next problem is that accepting jobs with contractors that DOD officials have surveilled leads to questions about the integrity of that particular contract administration function. I was personally interviewed by the DOD IG and the FBI about post-Government employment of some of our former AFPRO officials with the contractor.

The next point is I think that independence and impartiality on the part of Government employee surveilling contractors are absolutes—you have to have it, particularly when you are in the field. When you are in the contractor's plant there's a natural human tendency, I believe, to regard someone a little bit differently, if you think they are going to make you a job offer. I think all of us recognize this.

There's a need for a tough approach when you are in an AFPRO surrounded by contractor people literally. Many of the issues that we dealt with were very fine, they were grey issues, issues about

cost allowability, allocability, cost accounting standards—things that were judgmental. And unless you had that adversarial approach and that tough line with the contractor, it's easy to perhaps be subtley influenced and have your particular opinions compromised.

I do not think that the flow between industry and those who surveil a particular contract or an industry is imaginary. In my own limited experience in the Government I saw the following: A former commander of the Pratt & Whitney AFPRO went to work for Pratt & Whitney. Another former commander of Pratt & Whitney AFPRO, under investigation for employment with United Technologies. A Government auditor for Pratt & Whitney went to work for Pratt & Whitney. A deputy commander at the Pratt & Whitney AFPRO went to work for a subsidiary of Pratt & Whitney's parent company, United Technologies.

Within the command, I saw the AFPR, that's the Air Force plant representative, of Martin-Marietta go to work for Martin. I saw the AFPR for Boeing go to work for Boeing. I saw the AFPR for Westinghouse go to work for Westinghouse. I saw the AFPR for General Dynamics go to work for General Dynamics.

After I was out of the Government, when I was with TRW, I saw the DCAS head of the resident office at the subsidiary of TRW I was with go to work for that subsidiary.

My own company—I have seen Government employees in DCAS and DCAA hired by it.

Also, I saw the commander of Air Force Systems Command go to work as a consultant for United Technologies. A former commander of Air Force Systems Command went directly to work for Pratt & Whitney Aircraft.

It was very difficult to preach the sanctity of conflict-of-interest prohibitions and tell our employees not to take gratuities and that coffee and doughnuts, or tickets, or meals, will influence their judgment, and then have them see these officials go to work for the contractors.

Another point I would like to make about this is that in most of these instances the turnaround was very quick. You are working for the Government one day, and you are working for the contractor the next.

I saw a regular stream of retirees from my AFPRO approach the contractor, apply for terminal leave, approach the contractor and solicit employment at that point. That was permitted under the regulation.

You have two problems with this: You do have an appearance problem and I think you do have an independence problem. You have to emphasize that the Government and contractor need to keep at an arm's-length distance.

I have often wondered how this would look if some of these daily examples that I saw—and I am sure a thousand other Department of Defense officials have seen a thousand times, would look if they go into print.

I think that there is a tendency of the public, perhaps, to assume that a Government official's past decisions might be influenced by their perspective employment. And I can't say that that feeling is wholly unjustified.

There are some gaps in the law. I am not going to go into those in detail because I think that has been brought out today.

But I think we need to look at the purpose of the statutes and the regulations that we have and what they actually do. Under 37 U.S.C. 801, for example, a retired Army captain cannot sell to the Air Force. The Army captain might have been a tank commander. Yet, it is prohibited that he can sell to the Air Force. A very broad prohibition. Yet, an AFPRO commanding officer can take a job under these regulations with the contractor that he surveilled. That is permitted. To me, I think we need some revision.

I looked at Bennett/Boxer for the first time last week. While I think some refinements, perhaps, need to be made to it, I was pleased with that bill. I think it's the first one I have seen that targets particular procurement officials for appropriate restrictions. If anything, I think it is less offensive than some of the statutes that are currently on the books. For example, 18 U.S.C. 281, is a lifetime prohibition of all sales to a department for retired regular officers. This is a statute that the Justice Department noted in the case of *Field* v. *Brown* was probably unconstitutional—very difficult for our people to enforce.

Also, 37 U.S.C. 801, which applies again to retired regular officers. And I have seen a number of retired Reserve officers working with DOD contractors and selling to the Government and they are not affected by that statute.

I have seen majors with 10, 12 years procurement experience—they leave the service—they are not affected by 18 U.S.C. 281. Yet, that same statute would, for example, affect the tank commander that subsequently takes a job with the contractor.

I recognize that there are problems applying some of this at higher levels. I think that the Bennett/Boxer bill, though, is taking care of the primary problem—and that's addressing this at the field level.

I do have some thoughts how it could be applied at the higher levels. Certainly, I would be happy to go into those sometime.

To summarize, I think we do have a choice of philosophy. We have to determine how we want our conflict-of-interest statutes to be structured. The American view is to prohibit Government employees from accepting gratuities and to try to avoid the appearance of impropriety. That's not necessarily the only approach.

I have had some experience with the Japanese recently, and they have institutionalized the revolving door. The Japanese Defense Agency will call up contractors and say, "We have retiring officers." We would like you to employ these particular officers. The theory, I suppose, is that everyone is represented by a JDA official, and that they are all on basically equal footing.

I don't think the American public would accept that kind of approach. I don't think that's the approach for us. I think we have to draw hard lines. I think there's a gaping breach in these regulations that allow key DOD employees surveilling contractors to accept jobs with those contractors.

I do support the Bennett/Boxer bill in spirit and I would be happy to answer any questions you have.

Mr. SIKORSKI. Once again, I thank you for your very helpful testimony. It's a shame that you come at the end after Mr. Cox and

others who argue in their version of common sense that these problems simply don't exist. You don't have to argue logically, but theoretically you just have to get down in the trenches and talk to the people who live it, as the AFPRO's do, across the country.

Mr. ROHM. They are taking an inconsistent view of the word gratuities, I believe. Tickets to sports events, meals, and entertainment, are gratuities and their acceptance is prohibited. Yet, jobs with the contractor are exempt under their view.

Mr. SIKORSKI. You are not in favor of prohibiting everyone who works for the Department of Defense from working for a defense contractor, or vice versa? And there's flow both ways.

Mr. ROHM. I am an example of such a someone—a transfusion between Government and industry, myself. Of course, I was with the Air Force and now I am with a defense contractor. But when I was getting out of the Air Force, I was very aware of potential conflicts. I voluntarily took it upon myself not to contact or negotiate in any way with United Technologies or any of its divisions or subsidiaries. I restricted my post-employment search to contractors that I had no direct connection—or even indirect, for that matter—or surveillance over. That was a personal choice.

Mr. SIKORSKI. Wasn't that punitive? According to Mr. Cox, we are going to penalize thousands of dedicated Americans who are doing the best work possible—that what Boxer and Bennett are proposing is just absolutely punitive.

Mr. ROHM. I had no problem finding a job. First of all, I think this legislation is going to affect a very small segment of the Armed Forces. I think it is appropriate legislation to protect the public's interest and to prevent that appearance of impropriety. I had no problem finding a job.

Mr. SIKORSKI. He said it's going to affect thousands of people—that it's an outrageously broad penalty that good, dedicated Americans will have to pay for.

The point is, it is only going to affect those people who shouldn't be taking jobs in the first place, with people that they are negotiating with. They shouldn't even have that in the back of their minds as they sit across the table arguing for the taxpayer's dollar being well spent.

Mr. ROHM. If the legislation prohibited separating DOD officials from employment with all defense contractors, I would agree. But that's not what this legislation does. It prohibits them from accepting employment with defense contractors over whom they have exercised significant procurement responsibility.

Mr. SIKORSKI. And only for 2 years.

Mr. ROHM. And only for 2 years. That's correct.

Mr. SIKORSKI. What type of activities did you perform as the AFPRO that make additional conflict-of-interest regulation appropriate? You are living with these people, right? Right in the plants?

Mr. ROHM. Sure. We have some very sensitive issues—the kinds of things that can be argued for either side. Of course, when I am with the contractor, I have my obligations to argue their best position under the law. When I was with the Government, I was obliged to assert the Government's best position under the law.

But I got involved with many questions that I think were of terrific cost impact. Just to give you a sampling of a few: I had a $35 million issue involving cost accounting standards 404 and 409 and its applicability to Pratt & Whitney.

I had a $15 million issue revolving around treatment of nonrecurring costs that were incurred by Pratt & Whitney.

I had an approximately a $500,000 issue regarding unallowable costs claimed by Pratt & Whitney in their G&A and whether we would cite them for what is known as CAS 405 noncompliance—that is claiming express unallowables.

Some of these matters are subjects of procurement legislation now because they have been recognized as grey areas.

Mr. SIKORSKI. What did they try to claim that was expressly unallowable?

Mr. ROHM. I'm sorry, sir, I didn't hear you.

Mr. SIKORSKI. Was this the Gucci bags or the fishing trips, or the——

Mr. ROHM. That kind of thing, that's correct—bottles of wine, tickets to sporting events, various buttons and knick-knacks with Pratt & Whitney logos—those kinds of things were appearing in the G&A, and we cited them for express unallowability, or at least I wrote——

Mr. SIKORSKI. If an individual in your position sides with the contractor on just one of these items, they can save the contractor enough money to hire them for sometimes hundreds of years.

Mr. ROHM. Easily.

Mr. SIKORSKI. And one is $15 million.

Mr. ROHM. Easily.

We got involved in the negotiation of general and administrative expense rates, overhead rates, and even out at the fifth decimal place they would affect hundreds of thousands of dollars.

Mr. SIKORSKI. This happens on an hour-by-hour basis across the country in defense contractors' plants. We have got people, both civilian and military employees of the Department of Defense—I think they have got over 6,000 auditors and over 3,000 investigators, and all the other people associated with them, making decisions that affect how the taxpayer's dollar is going to flow, or not flow.

Mr. ROHM. Yes, sir.

Mr. SIKORSKI. All you are saying is that it is not unreasonable to expect those people that have hands-on surveillance, supervisory, negotiating responsibility who significantly affect that flow of money to stay out of the employment of the people who have been on the other side of the table from them, for 2 years.

Mr. ROHM. I think it is unreasonable not to have it.

Mr. SIKORSKI. I have no further questions.

Do you have any additional comments you want to add?

Mr. ROHM. No, that's all, sir.

Mr. SIKORSKI. Again I want to express the thanks of the committee for your willingness to come forward and taking time out, and appreciation for your employer who is a defense contractor, for allowing you to come and speak as an American citizen with experience in this area.

In conclusion, I think the testimony here today has to be alarming. We have seen that Mary Ann Gilleece, DOD's top procurement official responsible in part for $140 billion in defense contracts, substituted her private financial interest for the public interest she was charged with serving. DOD's Inspector General concludes she violated the standards of conduct and they asked the Department of Justice to look at whether there was a violation, a criminal violation of conflict-of-interest laws as well.

Her job placed her in an excellent position to influence the rules and the regulations, and the overall policy that could save or cost defense contractors millions, if not billions, of dollars. The IG told us that, therefore, Ms. Gilleece could not possibly have disqualified herself from matters affecting every and each defense contractor.

The testimony also tells us that all three DOD officials responsible for advising and directing Ms. Gilleece regarding ethical and legal ramifications of her job in her job search failed to prevent this conflict of interest and its potential effects on procurement policies. This suggests that the Department of Defense has little interest in pursing conflict-of-interest cases, especially in light of their avid, one would say almost rabid, opposition to any kind of reform, minor as it may be.

Their Standards of Conduct and our ethics laws may need clarification. But regardless of how much clarification we undertake, the Department of Defense does not at this point, and will not, use the tools it already has.

Today's testimony also shows that we in Congress need to do our part to clean up conflicts of interest. We should pick up the recommendations made today by the inspector general. We thank them for their good efforts. We should work to further clarify negotiations and particular matters issues.

We should pass Mr. Bennett's and Ms. Boxer's revolving door reforms and go beyond so that we find a way to prevent cases like that of Mary Ann Gilleece from occurring again.

Some at the Department of Defense may have us believe that the Gilleece case is just an isolated case, an aberration, just like Secretary Weinberger would have us believe that the abuses by General Dynamics or Pratt & Whitney or the others were isolated cases.

But Mr. Rohm's testimony contradicts that philosophy. He told us that revolving door problems are common and that they do affect whether the taxpayers get a strong defense and strong national security from their tax dollars, or if they buy trips to Pago Pago, diamond bracelets, and Gucci bags.

We are very concerned that no one view DOD's actions in the Gilleece case as a precedent. This hearing and our investigation should send a strong message to DOD officials and to defense contractors that we will insist on full enforcement of conflict-of-interest laws and regulations and standards.

We will be pursuing this and other conflicts-of-interest and revolving door problems in the coming months.

With that we will adjourn.

[Whereupon, at 2:20 p.m., the subcommittee adjourned.]

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